

## STOCKTON CITY COUNCIL

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### RESOLUTION APPROVING A MANAGEMENT AGREEMENT BETWEEN THE CITY OF STOCKTON AND KEMPERSPORTS MANAGEMENT, INC., FOR THE OPERATION AND MAINTENANCE OF THE CITY OF STOCKTON GOLF COURSES, NAMELY VAN BUSKIRK AND SWENSON PARK

In March 2010, the City contracted with a consultant, John DeLorenzo, to perform a needs assessment study and analysis on the operation and condition of Stockton's municipally-owned golf courses; and

The City Council decided to explore the interests from the private golf industry to operate one or both of Stockton's golf courses under a long-term lease agreement or to purchase and operate one or both golf courses; and

On June 8, 2010, the City Council adopted Resolution 10-0188 and approved findings authorizing the distribution of a Request for Proposal (RFP) for the lease or purchase of one or both of the City golf courses; and

On August 27, 2010, a notification of RFP availability was mailed to national golf organizations and posted on the Bid Flash page of the City of Stockton's website; and

After the mandatory walk through, it was posted on the Bid Flash page on September 22, 2010, that the City's preference was a lease or own proposal but was also interested in other proposals to determine what options or vision a company may have for the golf courses; and

On November 17, 2010, a City selection committee began assessing the proposals and interviews were held on January 17, 2011; and

On February 3, 2011, the committee selected a management proposal from KemperSports Management, Inc. (KemperSports), based on the strength of its proposal, the documentation it provided, and the interview; and

On May 25, 2011, City Council was requested to provide direction to staff and to identify which of three options they would recommend for the City's golf operations for the next five-year period; and

City Council selected Option 2 to privatize operations of Swenson and Van Buskirk golf courses; and

City Atty:  
Review

Date June 14, 2011

KemperSports was founded in 1978 and has managed more than 90 golf courses and stand-alone driving ranges across the United States and Caribbean, many of which ranked in the top 100 in the United States; and

The firm currently manages 36 golf courses for 28 municipal clients and has been managing golf courses for public agencies since 1981; and

The firm has a strong and growing presence in Northern California and currently manages the golf courses of four public agencies and other various privately owned public golf courses; and

KemperSports' extensive experience, methods, and high standards in golf operations, marketing and public relations, and overall management will help improve and eventually maximize the potential of the City's golf courses; and

The City and KemperSports have come to an agreement regarding the management of the municipal golf courses and the terms of that agreement are reflected in the Management Agreement attached hereto as Exhibit 1 (Management Agreement); and

The Golf Course Fund 481 does not have the funds to pay for the costs associated with the transition and implementation of a new golf course management agreement. A transfer for an amount not to exceed \$500,000 from the Recreation Fund to the Golf Course Fund 481 to make the initial advance payments required in the Management Agreement, to pay for the ValleyCrest maintenance contract early termination fee, and for all other transition costs associated with the implementation of the new agreement is included in the proposed FY2011-12 Community Services budget; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The Management Agreement between the City and KemperSports for the operation and maintenance of the City's golf courses, a copy of which is attached hereto as Exhibit 1 and incorporated herein by this reference, is approved.
2. The City Manager is authorized and directed to execute the Management Agreement.
3. Included in the proposed FY2011-12 Community Services budget is a transfer of an amount not to exceed \$500,000 from the Recreation Fund 044 to the Golf Course Fund 481 to pay for initial advance payments to KemperSports and other transitions costs, which is approved.

4. The City Manager is authorized to take all other actions as are appropriate to carry out the intent of this Resolution.

PASSED, APPROVED, and ADOPTED JUN 21 2011.

*Ann Johnston*

ANN JOHNSTON, Mayor  
of the City of Stockton

ATTEST:

*for Bonnie Paige*  
KATHERINE GONG MEISSNER, City Clerk  
of the City of Stockton



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## MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT ("Agreement") is made and entered into as of June \_\_, 2011, by and between City of Stockton, a California municipal corporation ("Owner") and KemperSports Management, Inc., an Illinois corporation ("KSM").

### WITNESSETH:

WHEREAS, Owner owns the golf club facilities located in Stockton, California known as "Swenson Park Golf Course" and "Van Buskirk Golf Course" (collectively, the "Courses"); and

WHEREAS, Owner and KSM desire for KSM to operate and manage the Courses subject to the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants, promises, and agreements herein contained, the parties hereto agree as follows:

### ARTICLE 1

#### DEFINITIONS

1.1. Definitions. All capitalized terms referenced or used in this Agreement and not specifically defined herein shall have the meanings set forth on Exhibit A attached hereto.

### ARTICLE 2

#### APPOINTMENT AND TERM

2.1. Appointment. Owner hereby retains, engages and appoints KSM as Owner's agent to perform the Management Services during the Term, as more fully described herein, and KSM hereby accepts said appointment upon and subject to the terms hereof.

2.2. Term. The initial term of this Agreement shall begin on June 1, 2011 (the "Commencement Date") and shall terminate on June 30, 2016 (the "Termination Date") unless terminated or extended according to the provisions hereof (the "Term"). The Term of this Agreement may be extended for a term of up to five (5) years upon the expiration of the Term then in effect upon the mutual agreement of Owner and KSM.

## ARTICLE 3

### MANAGEMENT SERVICES

3.1. Management of the Courses and Property. KSM shall perform the management services described in this Article 3 (collectively, the "Management Services") and shall supervise, manage, direct, and operate the Courses and the Property on behalf of and for the account of Owner, subject to the terms hereof and at all times consistent with the Operating Budget approved by Owner. Owner hereby delegates to KSM, subject to the (i) Budgets, (ii) Owner's approval rights specifically described in this Agreement (the "Approval Rights"), and (iii) other terms and conditions set forth herein, the discretion and authority to determine operating policies and procedures, standards of operation, house rules, standards of service and maintenance, pricing, and other policies, rules, and regulations affecting the Courses or the Property or the operation thereof, to implement all of same, and to perform any act on behalf of Owner deemed by KSM to be necessary or desirable for the operation and maintenance of the Courses and the Property, subject to Owner's reasonable input and direction from time to time and approval on specific identified items.

3.2. Use of the Property. Owner hereby grants to KSM the right to use and occupy the Property during the Term for the purposes set forth herein. KSM shall, upon the expiration or prior termination of the Term, vacate and surrender the Courses and Property to Owner.

3.3. Scope of Services. KSM will manage all activities of the Courses that are included in the annual Operating Budget and approved by Owner. KSM will operate the Courses to high quality standards (i.e., golf course maintenance, customer service, etc.), including the Maintenance Standards attached hereto as Exhibit C, as provided for in the approved Operating Budget. Subject to the terms of this Agreement and the approved Operating Budget, KSM shall have the authority and responsibility to:

3.3.1. Manage all operations of the Courses, including but not limited to, pro shop operations, golf course maintenance, starter and marshal services, and use commercially reasonable efforts to achieve the approved Operating Budget;

3.3.2. Maintain clubhouse landscape and hardscape, including the parking lot areas;

3.3.3. Employ at each of the Courses, a Class A Golf Professional and a Class A Superintendent;

3.3.4. Employ a professional food and beverage manager and staff to manage and conduct day-to-day food and beverage operations at each of the Courses. Operational hours will be presented with the Annual Budget and recommendation to change hours shall require written notification and approval by Owner;

3.3.5. Purchasing and sale of merchandise for the pro shop, and maintenance and replacement (as necessary) of furnishings, equipment and fixtures for the pro shop;

3.3.6. Implement the policies and standards of the Courses, as approved by Owner;

3.3.7. Establish and adhere to high quality golf course maintenance standards (Exhibit C) approved by Owner and funded appropriately in the Operating Budget;

3.3.8. Manage and supervise all day-to-day operations of the Courses, including tee time reservations, collecting green and cart fees, clubhouse operations, outside services, course maintenance, managing tournaments and events, payroll and benefits administration, accounting and financial reporting, etc;

3.3.9. Maintain driving ranges, including providing and servicing hitting mats, rubber tees, dividers and grass hitting areas;

3.3.10. Develop and provide to the public golf instructional programs, with special emphasis on the development of junior golf instruction programs.

3.3.11. Establish and nurture golf leagues, tournaments, in-house golf clubs and junior programs;

3.3.12. Hire, train, and supervise all employees required to carry out KSM's responsibilities;

3.3.13. Manage payment of all Courses operating expenses as identified in the Operating Budget;

3.3.14. Determine hours of operations and dress code requirements subject to approval by Owner, establish starter, marshal and other outside services, establish handicap services, and golf instruction programs;

3.3.15. Acquire all goods and services necessary to carry out KSM's responsibilities;

3.3.16. Maintain all golf course and food and beverage buildings, including but not limited to, the clubhouses, pro shops, cart barns, restrooms, and maintenance buildings and related storage areas;

3.3.17. Market the Courses to achieve targeted objectives;

3.3.18. Measure customer satisfaction levels of golf course and food and beverage operations and reporting results to Owner at least semiannually;

3.3.19. Arrange for the design of a website with design and content approved by Owner in advance;

3.3.20. Obtain licenses and other operating permits; including ABC license for sale of alcoholic beverages at each course, both in the food and beverage



buildings and on the courses, the costs associated therewith to be Operating Expenses of the Courses;

3.3.21. Negotiate contracts for maintenance equipment and carts to be approved and executed by Owner;

3.3.22. Prohibit placement of signs or advertisement upon any property of Owner or upon any vehicle used by KSM in connection with the Management Services under any contract or agreement without written approval by Owner;

3.3.23. Honor pre-sold season tickets and gift certificates to allow completion of these transactions at either of the Courses;

3.3.24. Use commercially-reasonable efforts to comply with all insurance and legal requirements of the Courses; and

3.3.25. Make repairs and other improvements to keep the Courses in good order.

3.3.26. Arrange for the provision and maintenance of a fleet of 45 electric-powered golf carts for public rental at Van Buskirk Golf Course and 60 electric-powered golf carts for public rental at Swenson Park Golf Course;

3.3.27. Develop golf policies and manual for Owner approval, educating the golfing clientele about them and enforcing them;

3.3.28. Select and price food and beverage items, to be at least comparable to industry standards for other northern California golf courses;

3.3.29. Arrange for the provision and maintenance of all restaurant and kitchen equipment needed (including utensils and dishes) beyond what the Owner currently provides for food and beverage service at the golf course, replacing equipment when needed;

3.3.30. Meet at least quarterly with Owner representatives to evaluate and discuss golf course and food and beverage operations and to make any operational changes that may be warranted;

3.3.31. Give the Owner the right to use the golf courses for special Owner events, including golf, for not less than (5) Mondays, excluding holidays, with the option for an additional two (2) special event days each year of the Agreement.

3.4. Budgets. All budgets, as hereinafter set forth (collectively the "Budgets"), shall be prepared with the advice and counsel of Owner, based on what KSM believes to be reasonable assumptions and projections, and delivered to Owner for Owner's review and written approval. All Budgets shall be presented in reasonable detail. KSM shall not be deemed to have made any guarantee or warranty in connection with the results of operations or performance set forth in the

Budgets and the parties acknowledge that the Budgets are based solely upon KSM's judgment and the facts and circumstances known by KSM at the time of preparation.

3.4.1 Operating Budget. Within twenty one (21) days after the Commencement Date, KSM shall submit to Owner, for Owner's review and written approval, an Operating Budget setting forth the forecasted revenues and expenses associated with the operations of the Courses for the 2012 fiscal year (July 1, 2011 through June 30, 2012) (the "Operating Budget"). Thereafter, on or before March 1<sup>st</sup> of each year, KSM shall submit to Owner, for Owner's review and written approval, a proposed Operating Budget for the upcoming fiscal year or part thereof within the Term. The Operating Budget shall include a marketing plan for the upcoming year.

3.4.2 Capital Expenditures Budget. Within ninety (90) days after the Commencement Date, KSM shall submit to Owner, for Owner's review and written approval, a budget setting forth the proposed capital improvements (including equipment purchases and leases) within and to the Property for the 2012 fiscal year and a five (5) year Capital Expenditure forecast (the "Capital Expenditures Budget"). Thereafter, on or before March 1<sup>st</sup> of each year, KSM shall submit to Owner, for Owner's review and written approval, a proposed Capital Expenditure Budget for the upcoming fiscal year or part thereof within the Term, which shall include an update to the five (5)-year Capital Expenditure forecast.

3.4.3 Owner's Review and Approval of Budgets. The Budgets shall be for Owner's review and written approval, subject to the terms of this Agreement. Owner shall give its written comments and/or tentative approval within thirty (30) days after KSM delivers the Budgets to Owner. Owner shall respond to KSM indicating whether such Budget is accepted for presentation to the City Council, or Owner will indicate the items in the Budget that preclude the Owner from accepting it. KSM shall work with Owner regarding Owner concerns and accordingly amend the Budget and resubmit the same for acceptance by the Owner and such process shall continue until the Owner accepts the Budget. The accepted Budget will then be submitted for City Council approval along with the Owner's normal budget approval process, and only if approved by the City Council shall it be considered an approved budget. In the event of disapproval of any Budgets, KSM shall continue operating the Courses pursuant to the Budgets then in effect, subject to increases in Operating Expenses required due to (i) increases in Gross Revenues or (ii) other matters beyond the control of KSM, until such time as Owner and KSM agree upon the appropriate replacement Budgets.

3.4.4 Unanticipated Expenditures and Reallocation of Funds. Owner agrees that the Budgets are intended to be reasonable estimates, and, accordingly, KSM shall be entitled from time to time to revise the Budgets to cover any expenditures that were unanticipated at the time of preparation of the Budgets but are reasonable and necessary to carry out the provisions of this Agreement; provided, however, that except as otherwise set forth in this Agreement, KSM shall be required to obtain Owner's prior written approval of any expenditures which would result in the total budgeted expenditures being exceeded by more than five percent (5%) of the annual Operating Budget. KSM is authorized to take all action reasonably deemed necessary by KSM to



implement, perform, or cause the performance of the items set forth in the Budgets. Owner acknowledges that KSM has not made any guarantee, warranty, or representation of any nature whatsoever concerning or relating to (i) the Budgets, or (ii) the amounts of Gross Revenues or Operating Expenses to be generated or incurred from the operation of the Courses.

3.5 Course Operations. KSM shall use commercially reasonable efforts to perform all acts that are necessary in the opinion of KSM to operate and manage the Courses, subject to the Budgets, the Approval Rights and terms and conditions set forth herein, on behalf of and for the account, and at the sole cost and expense of Owner, in accordance with the standards of quality expected at high quality golf courses in the vicinity of the Courses. KSM shall have the authority and responsibility for the administration, operation and management of the Courses and the Property. At a minimum, KSM shall perform the following acts and services:

3.5.1 Financial Management, Accounting Records and Reporting. The day-to-day accounting and financial affairs of the Courses shall be handled generally by KSM's home office. KSM's duties shall include: (i) maintaining all books, records, and other data associated with the financial activities of the Courses, (ii) preparing all operating budgets, cash flow budgets, and other financial forecasts, and (iii) being responsible for the day-to-day financial affairs of the Courses (collectively, the "Accounting Services"). All accounting records shall be maintained in a format consistent (in all material respects) with generally accepted accounting principles. In order to reimburse KSM for the use of its internal resources in connection with the performance of such Accounting Services by its home office, Owner shall pay to KSM a monthly accounting reimbursement as described in Section 5.1.2 (the "Accounting Reimbursement"), which Accounting Reimbursement shall be an Operating Expense.

(A) Financial Reporting. During the Term, KSM shall provide the following financial statements in conformance with GAAP, as set forth by the AICPA and a format specified by Owner:

- 1) KSM shall submit to Owner, within twenty (20) days after the close of each calendar month, a financial statement showing in reasonably accurate detail the budgeted and actual financial activities of the Courses for the preceding calendar month and the fiscal year to date.
- 2) KSM shall submit to Owner, within sixty (60) days after the close of each fiscal year, a financial statement prepared in conformity with General Accepted Accounting Principles, as set forth by the American Institute of Certified Public Accountants, for the fiscal year then ended. KSM will engage an auditor to provide an independent auditor's report containing an opinion of an independent certified public accountant to be submitted to Owner no later than 90 days after the fiscal year-end, the cost of which shall be an Operating Expense of the Courses. The annual audit shall be performed by a reputable firm selected by KSM. The

Owner will have the right to approve the auditor selected, which approval shall not unreasonable be withheld or delayed.

(B) Internal Control. KSM agrees to develop, install, and maintain reasonably appropriate accounting, operating, and administrative controls designed to safeguard assets, ensure compliance with all laws, regulations and contracts, and detect defalcation and fraud.

(C) Records and Inspection. KSM shall maintain, at all times during the Term, ~~and all extensions, a full set of all financial, vendor and operating records~~ relating to the Courses at the Properties. At any time during the Term, Owner shall have the right, to inspect the books, records, invoices, deposits, canceled checks, or other financial or operating data or transactions of the Courses, during normal business hours at the Property. Notwithstanding the foregoing, such inspection rights shall not extend to any inspection of KSM corporate records at its corporate office nor any records relating to any other projects or locations. Upon expiration or termination of this Agreement, KSM will promptly turn over all such Course records to Owner.

3.5.2 Bank Accounts. KSM shall assist Owner in establishing, in Owner's name, utilizing the federal tax identification number of Owner, a deposit account (the "Deposit Account"). Owner agrees that individuals designated by KSM, and approved in writing by Owner, shall be signatories on the Deposit Account, and that Owner will not change the signatories of such account or close such account without the prior written consent of KSM. Additionally, KSM shall establish a payroll account (the "Payroll Account") and an operating expense account (the "Operating Expense Account") in KSM's name. Pursuant to section 3.5.1(C), all bank accounts, the records and bank statements shall be subject to inspection by Owner pursuant to the terms recited herein. All Gross Revenues of the Property shall be collected, received, and deposited by KSM exclusively through the Deposit Account in accordance with the terms of this Agreement. All Operating Expenses shall be handled and expended exclusively through the Operating Expense Account. All Gross Payroll for the Courses shall be handled and expended exclusively through the Payroll Account.

3.5.3 Employees. As part of the Operating Budget, KSM shall (i) determine personnel requirements, recruitment schedules, and compensation levels, (ii) furnish job descriptions, performance appraisal procedures, employee benefit programs, and operational and procedural manuals for all personnel, and (iii) establish forms and procedures for employee compensation and Course incentive programs. KSM shall hire, promote, discharge, and supervise all employees performing services in and about the Courses. All of the employees of the Courses shall be employees of KSM, and shall not be considered employees of Owner.

3.5.4 Marketing. KSM shall make recommendations to Owner as to green fees and other fees and rates in the Marketing Plan for the approval of the Owner. KSM shall develop the ongoing marketing plan for the Courses and define a schedule of

marketing and advertising activities, which shall be submitted to Owner as part of the Operating Budget. Upon Owner's approval, KSM shall indicate on the premises that the Courses are being operated by KSM.

3.6 Environmental Remediation. Throughout the Term, if KSM becomes aware of the presence of any Hazardous Material, in a quantity sufficient to require remediation or reporting under any Environmental Law in, on or under the Property or if KSM, Owner, the Courses, or the Property becomes subject to any order of any federal, state or local agency to investigate, remove, remediate, repair, close, detoxify, decontaminate or otherwise clean up the Property, ~~KSM shall, at Owner's request and sole expense, use all commercially reasonable~~ efforts to carry out and complete any required investigation, removal, remediation, repair, closure, detoxification, decontamination or other cleanup of the Property; provided that such remediation activities shall be at KSM's expense if such activities are required as a direct consequence of Hazardous Material being present in, on or under the Property solely as a result of negligent actions undertaken by KSM and not directed or approved by Owner, excluding current customary usage. Owner acknowledges and agrees that Owner shall be solely responsible for any legal or other liability arising out of the presence of any Hazardous Material in, on or under the Property, except to the extent such Hazardous Material is present in, on or under the Property solely as a result of negligent actions undertaken by KSM and not directed or approved by Owner, excluding current customary usage.

3.7 Contracts. KSM shall negotiate, consummate, enter into, and perform, in the name of the Courses, such agreements as KSM may deem necessary or advisable for the furnishing of all food, beverages, utilities, concessions, entertainment, operating supplies, equipment, repairs and other materials and services as KSM determines are needed from time to time for the management and operation of the Courses. Notwithstanding the above, any contract which exceeds Twenty Five Thousand Dollars (\$25,000) in total payments over the term of such contract or which has a term of over one (1) year shall require the prior written consent of Owner. Any contract that cannot be made in the name of the Courses shall be provided to Owner for its execution in the name of Owner.

3.8 Licenses, Permits, and Accreditations. KSM shall apply for and use its commercially reasonable efforts to obtain and maintain, in Owner's name (or, if otherwise required by applicable law, in KSM's name), all licenses, permits, and accreditations required in connection with the management and operation of the Courses, the cost of which shall be an Operating Expense. Owner will cooperate with KSM in applying for, obtaining, and maintaining such licenses (including liquor licenses), permits, and accreditations.

3.9 Legal Action. KSM may not institute any legal action by or on behalf of Owner or the Courses without the prior written consent of Owner and Owner may not institute any legal action by or on behalf of KSM without the prior written consent of KSM.

3.10 Emergency Expenditures. In the event, at any time during the Term, a condition should arise in, on, or about the Property of an emergency nature which, in KSM's sole and absolute discretion, requires immediate action to preserve and protect the Property, to assure the continued operation of the Courses, or to protect the customers, guests, or employees of the Courses, KSM is authorized to take all steps and to make all reasonable expenditures necessary

to repair and correct any such condition, whether or not provisions have been made in the applicable Budgets for any such expenditures. Owner shall be notified of the need for, and estimated amount of, any such emergency expenditures as soon as reasonably practical.

3.11 Compliance with Laws. KSM shall use commercially reasonable efforts to (i) comply with all federal, state and local laws, ordinances, rules, or governmental regulations now or hereafter in force, or by order of any governmental or municipal power, department, agency, authority, or officer (collectively "Laws") applicable to the use, operation, maintenance, repair and restoration of the Courses and Property, whether or not compliance therewith shall interfere with the use and enjoyment of the Courses and Property; and (ii), except for those which are the obligation of Owner or Owner's separate contractors, procure, maintain and comply with all licenses and other authorizations required for any use of the Courses and Properties then being made, and for the operation and maintenance of the Courses and Property or any part thereof, the costs of which shall be Operating Expenses. Notwithstanding the foregoing, Owner acknowledges and agrees that Owner or its construction contractors shall be responsible for procuring, maintaining and complying with all licenses and other authorizations relating to design, construction, zoning, erection, installation and similar matters relating to any construction at the Courses. If at any time during the Term KSM is notified or determines that repairs, additions, changes, or corrections in the Property of any nature shall be required by reason of any Laws, KSM shall notify Owner and request Owner's consent to take all reasonable steps and to make all reasonable expenditures necessary to repair and correct any such repairs, additions, changes, or corrections whether or not provisions have been made in the applicable Budgets for any such expenditures, the costs of which shall be Operating Expenses. If Owner withholds such consent, KSM shall not be liable for any failure of the Property to be in compliance with such Laws.

3.12 Other Duties and Prerogatives. KSM shall use commercially reasonable efforts to perform any act that is necessary to operate and manage the Courses and the Property during the Term, subject to the terms and conditions hereof. In fulfilling its operational and managerial responsibilities hereunder and subject to the limitations otherwise stated herein, KSM shall have all rights ordinarily accorded to a manager in the ordinary course of business, including, without limitation, the collection of proceeds from the operation of the Courses and the Property, the incurring of trade debts in Owner's name (other than mortgage indebtedness), the approval and payment of obligations, and the negotiating and signing of leases and contracts. KSM shall not be obligated to advance any of its own funds to or for the account of Owner nor to incur any liability, unless Owner shall have furnished KSM with funds necessary for the full discharge thereof. Further, KSM shall not be obligated to sign any leases, contracts or other agreements in KSM's name. However, if for any reason KSM shall have advanced funds, with Owner's consent or otherwise in accordance with the terms of this Agreement, in payment of any reasonable expense in connection with the maintenance and operation of the Courses or the Property, Owner shall reimburse KSM within thirty (30) days after invoice for the full amount of such payments less any advances Owner has made to KSM.

## ARTICLE 4

### RESPONSIBILITIES OF OWNER

4.1 Expenditures. Owner acknowledges that it is solely responsible for all Operating Expenses and capital expenditures required for or on behalf of the Courses provided that such Operating Expenses and capital expenditures are made in accordance with the terms of this Agreement. Owner shall be responsible for all other expenditures and obligations in connection with the Courses and the Property, including without limitation, all federal, state and local taxes and all principal and interest payments on indebtedness.

4.2 Owner's Advances. Owner shall advance funds to the Operating Expense Account described in Section 3.5.2 to conduct the affairs of the Courses and maintain the Property (the "Owner's Advances") as set forth below. Such Owner's Advances may be paid by check, wire transfer or authorization to apply funds from the Deposit Account towards the payment of such Owner's Advances. Owner acknowledges and agrees that it has sole responsibility for providing Owner's Advances and KSM shall have no responsibility to provide funds for the payment of any Operating Expenses, Gross Payroll, debts or other amounts payable by or on behalf of the Courses, the Property or Owner.

4.2.1 Operating Expense Account. On or before the Commencement Date (and in any event, prior to KSM's incurrence of any Operating Expenses), Owner shall remit to KSM for deposit into the Operating Expense Account, Owner's Advances equal to six week's estimated Operating Expenses, including Gross Payroll obligations (as specified in the approved Budget) (the "Operating Expense Minimum"). Owner shall replenish the Operating Expense Account in order to maintain the Operating Expense Minimum in the Operating Expense Account as described below. KSM shall use the funds in the Operating Expense Account to pay the Operating Expenses of the Courses and to fund the Payroll Account. On a monthly basis by the 15<sup>th</sup> day of the preceding month, KSM shall provide Owner with a statement describing the anticipated source and use of funds for the Courses for the next monthly period. Within thirty (30) days after Owner's receipt of such statement from KSM, Owner shall remit to the Operating Expense Account the amount set forth in such statement, less the amount, if any, then on deposit in the Deposit Account to the extent Owner authorizes the transfer of such amount to the Operating Expense Account. The parties agree to adjust the Operating Expense Minimum seasonally or as otherwise required from time to time, in order to reflect the then-current payment obligations of the Courses.

4.2.2 Payroll Account. On or before the Commencement Date (and in any event, prior to KSM's incurrence of any Gross Payroll obligations), Owner authorizes the transfer from the Operating Expense Account to the Payroll Account advances equal to six week's estimated Gross Payroll obligations (as specified in the approved budget) (the "Payroll Expense Minimum"). Owner shall replenish the Operating Expense Account and authorize the transfer from the Operating Expense Account to the Payroll Account in order to maintain the Payroll Expense Minimum in the Payroll Account as described below. On a bi-weekly basis, KSM

shall fund payroll and the Gross Payroll obligations from the Payroll Account and concurrently provide Owner with a statement containing such funded Gross Payroll obligations of the Courses. Within (thirty (30) days after Owner's receipt of such statement from KSM, Owner shall remit to the Operating Expense Account the amount set forth in such statement, less the amount, if any, then on deposit in the Deposit Account to the extent Owner authorizes the transfer of such amount to the Payroll Account. The parties agree to adjust the Payroll Expense Minimum seasonally or as otherwise required from time to time, in order to reflect the then-current payroll obligations of the Courses.

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## ARTICLE 5

### FEES, EXPENSES AND RECEIPTS.

5.1 Management Fee. During the Term, Owner shall pay KSM management fees as follows (the "Management Fee"):

- 5.1.1 Fixed Management Fee. Owner shall pay KSM an annual fixed management fee of \$84,000 (the "Fixed Management Fee"), which fee shall be paid in equal monthly installments in advance, no later than the first day of each calendar month. (Such Fixed Management Fee shall be prorated for any partial calendar month occurring during the Term.) The Fixed Management Fee shall be increased each year on the anniversary of the Commencement Date by (i) the percentage change in the Consumer Price Index – All Urban Consumers (CPI-U) - U.S. City Average – All items as published by the Bureau of Labor Statistics of the U.S. Department of Labor for the twelve month period ending prior to the Commencement Date, or (ii) three percent (3%), whichever is lower. Payment of the Fixed Management Fee may be made directly from the Operating Expense Account.
- 5.1.2 Accounting Reimbursement. Owner shall pay KSM an annual Accounting Reimbursement equal to Thirty Six Thousand Dollars (\$36,000). The Accounting Reimbursement shall be paid in equal monthly installments, in advance, no later than the first day of each calendar month. (Such Accounting Reimbursement shall be prorated for any partial calendar month occurring during the Term.) The Accounting Reimbursement shall be increased each year on the anniversary of the Commencement Date by (i) the percentage change in the Consumer Price Index – All Urban Consumer (CPI-U) – U.S. City Average – All items as published by the Bureau of Labor Statistics of the U.S. Department of Labor for the twelve month period ending prior to the Commencement Date, or (ii) three percent (3%), whichever is lower. Payment of the Accounting Reimbursement may be made directly from the Operating Expense Account.
- 5.1.3 Incentive Management Fee. Commencing in the 2012 fiscal year (July 1, 2011 through June 30, 2012), Owner shall pay KSM an annual incentive management fee (the "Incentive Management Fee") calculated as follows:



Five percent (5%) of the increase in the combined Gross Revenues for the Courses for such fiscal year from the Threshold Amount. The "Threshold Amount" shall mean the actual combined Gross Revenues for the Courses for the 2011 fiscal year (July 1, 2010 through June 30, 2011). However, notwithstanding any other term herein, in no event shall the Incentive Management Fee exceed the Fixed Management Fee in any fiscal year.

The Incentive Management Fee shall be paid to KSM within thirty (30) days after KSM delivers to Owner the year-end Financial Statement.

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[For example: If the actual combined Gross Revenues for the Courses for the 2011 fiscal year equal \$2,000,000, then this becomes the Threshold Amount. Then if the combined Gross Revenues for the Courses in the 2012 fiscal year equals \$2,200,000, the Incentive Management Fee would equal \$10,000 (\$2,200,000 - \$2,000,000 = a \$200,000 increase, multiplied by 5%)

5.2 Out-of-Pocket Expenses. In addition to all other fees and expenses recited herein payable to KSM, and subject to Owner's approval of same in the Budgets, it is agreed that Owner shall reimburse KSM within thirty (30) days of invoice for all actual out-of-pocket expenses incurred by KSM in the performance of this Agreement. Out-of-pocket expenses shall include, but shall not be limited to, reasonable travel, air express, costs of recruitment (including applicable agent's fees), and other incidental expenses. Reimbursement for such out-of-pocket expenses will be made at actual cost and may be made directly from the Operating Expense Account.

5.3 Late Fees. Owner shall pay to KSM all of the fees described above, and any other sums due KSM, at the times, at the places, and in the manner herein provided. If any payment or any part thereof to be made by Owner to KSM pursuant to the terms hereof shall become overdue for a period of thirty (30) days, a "late charge" may be charged by KSM for the purpose of defraying the expense incident to handling such delinquency. The late charge shall be equal to (i) one percent (1%) per month. In the event any portion of this Section violates any state or federal law or regulation, this Section shall be deemed void and shall have no other effect or make invalid any other provision of this Agreement. Further, nothing herein shall be construed as waiving any rights of KSM arising out of any Events of Default of Owner by reason of KSM assessing or accepting any such late payment or late charge; the right to collect the late charge is separate and apart from any rights relating to remedies of KSM after default by Owner in the performance or observance of the terms of this Agreement. Owner shall bear the costs of any legal or collection fees and expenses incurred by KSM in attempting to enforce Owner's payment obligations hereunder.

5.4 Owner's Receipts. During the Term, in each calendar month Owner shall receive the Positive Net Cash Flow for such calendar month after payment of the Management Fee and any other fees, which amount shall be distributed, to the extent requested by Owner, within fifteen (15) days following the close of each calendar month ("Owner's Receipts"); provided, however, that a minimum balance of at least the Operating Expense Minimum and the Payroll Expense Minimum is maintained in the Operating Expense Account and the Payroll Account at all times.

5.5 Payments. In the reasonable discretion of KSM, upon the occurrence of an Insecurity Event, Owner shall take all necessary steps to initiate and authorize payment of the Management Fee on or before the fifth (5<sup>th</sup>) day of each month for services to be rendered during the upcoming month.

5.6 Deposit. In the reasonable discretion of KSM, upon the occurrence of an Insecurity Event, KSM will require the payment of a security deposit which will not be applied against amounts owing by Owner to KSM and will be retained by KSM as security for the payment of fees and expenses and returned to Owner at the end of the engagement. The terms and conditions applicable to the retainer are set forth in this Section 5.6.

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5.6.1 Amount and Payment of Deposit. The initial deposit (the "Deposit") shall be set at an amount equal to the aggregate of the Management Fee plus the expected out-of-pocket expenses of KSM, each to be estimated by KSM in its reasonable discretion based on expected amounts due and owing from Owner to KSM during a one (1) month period. KSM shall have the right to request that Owner add to the Deposit in the event that, at any time, KSM's monthly Management Fee plus the monthly expected out of pocket expenses exceeds the amount of the Deposit. Such Deposit shall be submitted by Owner as directed by KSM within thirty (30) days after KSM's request.

5.6.2 Security Interest in Deposit. The Deposit is a separate obligation of Owner and Owner understands and agrees that failure to submit such Deposit in accordance with the terms of this Agreement shall constitute an Event of Default hereunder. The Deposit shall not be applied or credited to amounts due from Owner as they come due, but will be returned to Owner once all amounts due hereunder are paid in full, or when the condition that created the Insecurity Event is resolved, reversed, or ceases to exist. Owner hereby grants a security interest in the Deposit to KSM to secure payment of all amounts due hereunder and expressly authorizes KSM to pay itself any amounts past due from the Deposit. Owner acknowledges and agrees that this security interest is perfected by virtue of KSM's possession of the Deposit.

5.6.3. Interest on Deposit. Interest earned on the Deposit is the property of Owner and shall be returned to Owner once all amounts due under the Agreement are paid in full. The Deposit is not intended to be an estimate for the total expenses to be incurred by Owner hereunder.

5.7 Payment Prior to Insolvency Proceeding. Prior to the initiation of an Insolvency Proceeding (as defined in Section 11.3 below) by Owner, if applicable, Owner shall pay all amounts then outstanding and owing to KSM in immediately available funds by wire transfer.

## **ARTICLE 6**

### **COVENANTS AND REPRESENTATIONS**

6.1 Owner's Covenants and Representations. Owner makes the following covenants and representations to KSM, which covenants and representations shall, unless otherwise stated herein, survive the execution and delivery of this Agreement:

6.1.1 Corporate Status. Owner is a municipal corporation, duly organized, validly existing, and in good standing under the laws of California, and authorized to transact business in California, with full corporate power and authority to enter into this Agreement.

6.1.2 Authorization. The making, execution, delivery, and performance of this Agreement by Owner has been duly authorized and approved by all requisite action, and this Agreement has been duly executed and delivered by Owner and constitutes a valid and binding obligation of Owner, enforceable in accordance with its terms.

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6.1.3 Effect of Agreement. Neither the execution and delivery of this Agreement by Owner nor Owner's performance of any obligation hereunder (a) shall constitute a violation of any law, ruling, regulation, or order to which Owner is subject, or (b) shall constitute a default of any term or provision or shall cause an acceleration of the performance required under any other agreement or document (i) to which Owner is a party or is otherwise bound, or (ii) to which the Courses, the Property or any part thereof is subject.

6.1.4 Ownership Rights. As of the Commencement Date and throughout the Term of this Agreement, Owner owns and shall retain all right, title and interest in the Courses and the Property peaceably and quietly. Owner represents and warrants that KSM's performance of any of the services contemplated by this Agreement shall not violate the property rights or interests of any other Person.

6.1.5 Documentation. If necessary to carry out the intent of this Agreement, Owner agrees to execute and provide to KSM, on or after the Commencement Date, any and all other instruments, documents, conveyances, assignments, and agreements which KSM may reasonably request in connection with the operation of the Courses.

6.2 KSM's Covenants and Representations. KSM makes the following covenants and representations to Owner, which covenants and representations shall, unless otherwise stated herein, survive the execution and delivery of this Agreement:

6.2.1 Corporate Status. KSM is a corporation duly organized, validly existing, and in good standing under the laws of Illinois, and authorized to transact business in California, with full corporate power to enter into this Agreement and execute all documents required hereunder.

6.2.2 Authorization. The making, execution, delivery, and performance of this Agreement by KSM has been duly authorized and approved by all requisite action of the board of directors of KSM, and this Agreement has been duly executed and delivered by KSM and constitutes a valid and binding obligation of KSM, enforceable in accordance with its terms.

6.2.3 Effect of Agreement. Neither the execution and delivery of this Agreement by KSM nor KSM's performance of any obligation hereunder (i) will constitute a

violation of any law, ruling, regulation, or order to which KSM is subject, or (ii) shall constitute a default of any term or provision or shall cause an acceleration of the performance required under any other agreement or document to which KSM is a party or is otherwise bound.

## ARTICLE 7

### INSURANCE

~~7.1 Course Insurance.~~ During the Term, the following insurance shall be maintained in connection with the operations at the Courses:

7.1.1 Insurance Maintained by Owner. During the Term, Owner shall secure the following insurance:

(A) Property Insurance covering loss or damage to the buildings, structures or other Improvements, contents, equipment and supplies. Such Property Insurance shall include a waiver of all right of recovery by way of subrogation against KSM and Owner in relation to any damage covered by such policy.

(B) Business Interruption, Loss of Income and Extra Expense Insurance that will reimburse Owner and KSM for direct and indirect loss of earnings attributable to six months of business interruption and for the actual loss sustained until the structures are substantially rebuilt after an insured property loss.

7.1.2 Insurance Maintained by KSM. KSM shall secure, the cost of which shall be an Operating Expense, the following insurance covering its on-site activities under this Agreement:

(A) Commercial General Liability and/or Umbrella/Excess Liability Insurance providing coverage for bodily injury and property damage arising in connection with the operation of the Club or on the Property and including coverage for contractual liability providing limits of not less than:

Bodily Injury and Property Damage Liability -	\$5,000,000 each occurrence
Personal Injury and Advertising Liability -	\$5,000,000 per person or per organization
General Policy Aggregate -	\$10,000,000
Products Liability/Completed Operations Aggregate -	\$5,000,000

(B) Commercial Business Automobile Liability Insurance including coverage for all owned, non-owned, and hired vehicles providing coverage for bodily injury and property damage liability with combined single limits of not less than \$1,000,000.

(C) Commercial Liquor Liability including coverage for damages arising out of the selling, serving or furnishing of any alcoholic beverage with a limit of \$5,000,000 per

occurrence/\$10,000,000 aggregate limit or the minimum limits required by statute if higher.

Special Note: the limits of liability specified in A, B and C above can be satisfied through a combination of primary, umbrella or excess liability policies, provided that the coverage under such umbrella or excess liability policies is at least as broad as the primary coverage.

(D) ~~Workers' Compensation Insurance in such amounts that comply with applicable statutory requirements, and Employer's Liability limits, including Umbrella Liability Insurance, if necessary, of not less than \$1,000,000 per accident, \$1,000,000 disease-policy limit, and \$1,000,000 disease each employee.~~

(E) Fidelity Bond or Fidelity Insurance covering all employees who have access to or responsibility for or who handle Owner funds.

All such insurance coverage maintained by KSM (except as set forth in (D) and (E)) shall name Owner as additional insured and shall be maintained with insurance companies rated at least A- by Best Key Rating Guide and shall be licensed to do business in California. KSM shall deliver to Owner certificates and endorsements of such insurance evidencing the required policies to:

CITY OF STOCKTON; ATTN: Risk Manager

22 West Weber Street, Suite 150  
Stockton, California 95202

Property insurance shall include a waiver of all recovery by way of subrogation against KSM and Owner in relation to any damage covered by such policy.

The expenses for all the coverages outlined in Section 7.1.2 (A) through (E) above shall be Operating Expenses.

7.2 Owner's Option to Provide Insurance. Upon Owner's prior written notification to KSM, Owner may procure and maintain, at Owner's sole cost and expense, with insurance companies rated at least A- by Best's Key Rating Guide, and licensed to do business in California, sufficient insurance fully covering the Property and operation of the Courses, in at least the amounts specified in Section 7.1.1 and 7.1.2 (A) through (C) above. All such insurance shall name KSM and its shareholders, officers, directors, employees, agents and representatives as additional insureds. Owner shall deliver to KSM certificates of insurance evidencing the above-required policies. Property insurance shall include a waiver of all recovery by way of subrogation against KSM in relation to any damage covered by such policy.

Within fifteen (15) days after receipt of such written notification from Owner, along with appropriate certificates of insurance, KSM shall no longer secure the coverage specified in Section 7.1.2 (A) through (C) above; provided, however, that KSM shall continue to secure the coverage specified in Section 7.1.2 (D) and (E) above. The expenses for the coverages provided by KSM shall be Operating Expenses.

7.3 Waiver of Subrogation. Notwithstanding anything else contained in this Agreement, Owner and KSM each hereby waives all rights of recovery against the other and their Affiliates, and against each of their officers, employees, agents and representatives, on account of loss by or damage to the waiving party's property or the property of others under its control, to the extent that such loss or damage is (i) insured against under any insurance policy which either may have in force at the time of the loss or damage; or (ii) is required to be insured against in accordance with this Agreement; or (iii) given the facts and circumstances surrounding the Property and the Courses, should reasonably be insured against by the Owner (in any case, regardless of whether or not such insurance policy is in effect). Owner shall, upon obtaining any policies of insurance required under this Agreement, give notice to its insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Agreement. This waiver of subrogation shall survive the expiration or termination of this Agreement.

## ARTICLE 8

### DAMAGE AND CONDEMNATION

8.1 Substantial Destruction. In the event the Real Property, Tangible Personal Property, and/or Improvements are damaged or destroyed by fire or other casualty to the extent that the damage cannot be materially restored with due diligence within two hundred seventy (270) days following such event, either party hereto may terminate this Agreement upon written notice to the other party given within ninety (90) days following the date of such destruction. In the event of termination of this Agreement pursuant to this Section, the Term shall cease and come to an end as of the effective date of termination specified in the termination notice (which shall in no event be prior to the date of receipt of the termination notice) as though such date were the date originally fixed for the expiration of the Term. Both parties shall pay all amounts due to the other party up to such effective date of termination (or, with respect to amounts due to KSM, after such date if it is reasonably necessary to incur additional expenses in the wind-down of operations of the Courses).

8.2 Partial Destruction. In the event the Real Property, Tangible Personal Property, and/or Improvements, or any portion thereof, is damaged or destroyed by fire or other casualty and such damage can be materially restored with due diligence within two hundred seventy (270) days following such event, Owner shall have the obligation to repair the damaged Real Property, Tangible Personal Property, and/or Improvements as nearly as practicable to the condition the same were in prior to such damage. Owner shall cause such repair to be made with all reasonable dispatch so as to complete the same at the earliest possible date.

8.3 Substantial Condemnation. In the event (i) all or substantially all of the Real Property is taken in any eminent domain, condemnation, compulsory acquisition, or similar proceeding by any competent authority for any public or quasi-public use or purpose, or (ii) a substantial portion of the Real Property is so taken, but the result is that it is unreasonable to continue to operate the Property for the purposes contemplated by this Agreement, then either party hereto may terminate this Agreement upon written notice to the other party given within ninety (90) days following the conclusion of the condemnation proceedings. In the event of termination of this Agreement pursuant to this Section, the Term shall cease and come to an end as of the effective date of termination specified in the termination notice (which shall in no event



be prior to the date of receipt of the termination notice) as though such date were the date originally fixed for the expiration of the Term. Both parties shall pay all amounts due to the other party up to the date of termination (or, with respect to amounts due to KSM, after such date if it is reasonably necessary to incur additional expenses in the wind-down of operations of the Courses).

8.4 Partial Condemnation. In the event a portion of the Real Property shall be taken by any of the events described in Section 8.3 above, or is affected but on a temporary basis, and the result is not to make it unreasonable to continue to operate the Property for the purposes contemplated by this Agreement, this Agreement shall not terminate. It is further agreed that any portion of any award, damages or other compensation paid to Owner on account of such partial taking, condemnation, or sale as is necessary to render the Property equivalent to its condition prior to such event shall be used for such purpose. The balance of such award, if any, shall be fairly and equitably apportioned between the parties in accordance with their respective interests.

## ARTICLE 9

### INDEMNIFICATION

9.1 Owner's Indemnification Obligations. Except as provided in Section 7.3, Owner shall defend, indemnify and hold KSM and its Affiliates and each of their shareholders, members, officers, directors, managers, employees, agents, and representatives (the "KSM Related Parties") harmless of and from all liability, loss, damage, cost, or expense (including, without limitation, reasonable attorneys' fees and expenses) arising from or relating to (i) the performance of the Management Services on behalf of Owner, and (ii) the ownership, leasing, organization, development or construction of the Courses or the Property; and (iii) Hazardous Materials or other conditions existing at the Courses or the Property; and (iv) the use by KSM of Courses trade names, trademarks, logos or other intellectual property used in connection with the Courses; and (v) any acts or omissions of Owner (or its officers, directors, agents, employees, representatives, contractors and others for whom Owner is responsible); and (vi) any activities in connection with the transition of the management of the Courses to KSM; and (vii) any acts or omissions occurring in connection with the operation or management of the Courses prior to the Term; to the fullest extent permitted by law, except to the extent such liabilities were caused by KSM's willful or criminal misconduct, gross negligence or fraud. Owner's duty to defend and indemnify KSM and the KSM Related Parties shall extend to all liability, loss, damage, cost, or expenses hereunder arising from or relating to any event or occurrence taking place prior to, during, or after the Term.

9.2 KSM's Indemnification Obligations. Except as provided in Section 7.3, KSM shall defend, indemnify and hold Owner and Owner's shareholders, officers, directors, employees, agents, and representatives (the "Owner Related Parties") harmless of and from all liability, loss, damage, cost, or expense (including, without limitation, reasonable attorneys' fees and expenses) arising from or relating to the negligent acts or omissions of KSM (or its officers, directors, agents, employees, representatives, contractors and others for whom KSM is responsible), to the fullest extent permitted by law, except to the extent such acts or omissions were directed or approved by Owner, or such liabilities were caused by Owner's willful or criminal misconduct, gross negligence or fraud. KSM's duty to defend and indemnify Owner

and the Owner Related Parties shall extend to all liability, loss, damage, cost, or expenses hereunder arising from or relating to any event or occurrence taking place prior to, during, or after the Term. Notwithstanding anything else contained herein, Owner acknowledges that KSM shall not be responsible for any damage to property under its care custody and control and that Owner shall ensure that all such damage is covered by appropriate insurance coverage.

9.3 Survival. The defense and indemnification obligations contained in this Article 9 shall survive the expiration or termination of this Agreement for any reason.

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## ARTICLE 10

### RIGHT TO CURE

10.1 Performance. Other than with respect to Owner's obligations pursuant to Section 5.5 to 5.7 hereof, if, after the expiration of any permitted grace period or notice and cure period, a party hereto shall have failed to cure any default in the performance of any representation, covenant, or obligation on its part to be performed, then the other party may, at any time thereafter, without further notice, perform the same for the account and at the expense of the other party. Notwithstanding the above, in the case of an emergency, either party may, after notice to the other party, so reasonably perform in the other party's stead prior to the expiration of any applicable grace period; provided, however, the other party shall not be deemed in default under this Agreement.

10.2 Reimbursement. If, pursuant to this Article, either party at any time is compelled or elects (as permitted by the immediately preceding Section) (i) to pay any sum of money, (ii) to do any act which will require the payment of any sum of money, or (iii) to incur any expense (including reasonable attorneys' fees) in instituting, prosecuting, and/or defending any action or proceeding instituted by reason of the other party's failure to perform, as described in the immediately preceding Section, the sum or sums paid or payable by such party, with all interest, cost, and damages, shall be immediately due from the other upon receipt of a statement and reasonable documentation therefor.

10.3 Disgorgement. If the incurring of any debt or the payments of money or transfers of property made to KSM by or on behalf of Owner, pursuant to this Agreement or any related documents shall subsequently be declared to be "void" or "voidable" within the meaning of any state or federal law relating to creditors' rights, including, without limitation, fraudulent conveyances, a preference, or otherwise voidable or recoverable, in whole or in part, for any reason under the federal Bankruptcy Code or any other federal or state law (individually, a "Voidable Transfer"), and if KSM is required to repay or restore any such Voidable Transfer or the amount or any portion thereof, or upon the advice of its counsel is advised to do so, then, as to any such Voidable Transfer or the amount repaid or restored (including all reasonable costs, expenses and attorneys' fees of Servicer on behalf of KSM related thereto), the obligations to KSM, or portion thereof, paid or deemed satisfied by such Voidable Transfer or such amount shall automatically be revived, reinstated and restored to the extent that such obligation to KSM, or portion thereof, existed immediately prior to such Voidable Transfer, and such indebtedness to KSM, or portion thereof, shall exist as though such Voidable Transfer had never been made, and this Agreement and all liens granted hereunder shall be revived, reinstated and restored as though

such Voidable Transfer had never been made. Moreover, KSM shall be entitled to the imposition of a constructive trust and equitable lien on all of Owner's assets to the extent any liens and security interest under this Agreement are not revived, reinstated or restored and there remains amounts due and owing under this Agreement as a consequence of a Voidable Transfer.

## ARTICLE 11

### EVENTS OF DEFAULT

~~The occurrence of any one or more of the following events which is not cured within the specified cure period, if any, shall constitute a default under this Agreement (hereinafter referred to as an "Event of Default"):~~

11.1 Failure to Pay Sums Due. Either party's failure to pay any sums payable under this Agreement when and as the same shall become due and payable and such failure shall continue for a period of ten (10) days after written notice (specifying the item not paid) thereof from the other party to the defaulting party.

11.2 Failure to Comply. Either party's material failure to comply with any of the covenants, agreements, terms, or conditions contained in this Agreement and such failure shall continue for a period of thirty (30) days after written notice thereof from the other party to the defaulting party specifying in detail the nature of such failure. Notwithstanding the foregoing, in the event any such failure cannot with due diligence be cured within such 30-day period, if the defaulting party proceeds promptly and diligently to cure the same and thereafter diligently prosecutes the curing of such failure, the time within which the failure may be cured shall be extended for such period as may be necessary for the defaulting party to cure the failure.

11.3 Bankruptcy. If either party (i) applies for or consents to the appointment of a receiver, trustee, or liquidator of itself or any of its property, (ii) is unable to pay its debts as they mature or admits in writing its inability to pay its debts as they mature and has not paid when due any sums owing to the other party as provided in this Agreement, (iii) makes a general assignment for the benefit of creditors, (iv) is adjudicated as bankrupt or insolvent, or (v) files a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors, or taking advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or admits the material allegations of a petition filed against it in any proceedings under any such law, or if any action shall be taken by said party for the purpose of effecting any of the foregoing (collectively, an "Insolvency Proceeding").

11.4 Reorganization; Receiver. An order, judgment, or decree is entered without the application, approval, or consent of either party by any court of competent jurisdiction approving a petition seeking reorganization of said party or appointing a receiver, trustee, or liquidator of said party, or of all or a substantial part of any of the assets of said party, and such order, judgment, or decree remains unstayed and in effect for a period of ninety (90) days from the date of entry thereof.

## ARTICLE 12

### REMEDIES

12.1 Owner's Remedies. Upon the occurrence of an Event of Default by KSM, Owner may:

12.1.1 Seek specific performance of KSM's obligations or injunctive relief, as applicable;

12.1.2 Demand and receive payment of all amounts due Owner under the terms of this Agreement and the payment of all costs, damages, expenses, and reasonable attorneys' fees of Owner arising due to KSM's Event of Default; and

12.1.3 Terminate this Agreement by written notice of termination to KSM. Upon proper termination of this Agreement, KSM shall surrender occupancy of the Property to Owner.

No remedy granted to Owner is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity, or by statute. No delay or omission by Owner to exercise any right accruing upon an Event of Default shall impair Owner's exercise of any right or shall be construed to be a waiver of any Event of Default or acquiescence thereto.

IN NO EVENT SHALL KSM BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF THIS AGREEMENT OR PERFORMANCE OR NON-PERFORMANCE HEREUNDER (INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST BUSINESS AND LOSS OF GOODWILL) EVEN IF ADVISED OR AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

12.2 KSM's Remedies. Upon the occurrence of an Event of Default by Owner, KSM may:

12.2.1 Seek specific performance of Owner's obligations or injunctive relief, as applicable;

12.2.2 Demand and receive payment of all amounts due KSM under the terms of this Agreement and the payment of all costs, damages, expenses, and reasonable attorneys' fees of KSM due to Owner's Event of Default;

12.2.3 Terminate this Agreement by KSM's written notice of termination to Owner. In such event, Owner shall pay to KSM a fee (the "Early Termination Fee") calculated as the greater of (i) six (6) months of Fixed Management Fees; or (ii) the remaining Fixed Management Fees that KSM would have earned had the Agreement remained in effect until June 30, 2014. The Early Termination Fee shall be paid within thirty (30) days after the effective date of termination, not as a

penalty, but as a reasonable estimate of the damages to be caused to KSM by such early termination.

No remedy granted to KSM is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity, or by statute. No delay or omission by KSM to exercise any right accruing upon an Event of Default shall impair KSM's exercise of any right or shall be construed to be a waiver of any Event of Default or acquiescence thereto.

~~12.3 Litigation. In the event of any litigation under or respecting this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and court costs through all pretrial, trial, appellate, administrative, and post-judgment proceedings.~~

## ARTICLE 13

### TERMINATION

13.1 Events of Termination. This Agreement shall terminate upon the occurrence of any of the events set forth below:

13.1.1 An Event of Default by KSM, and Owner sends to KSM a notice of termination for cause (after the expiration of any applicable cure period);

13.1.2 An Event of Default by Owner, and KSM sends to Owner a notice of termination for cause (after the expiration of any applicable cure period);

13.1.3 Both parties agree in writing to terminate this Agreement;

13.1.4 Upon the expiration or termination of this Agreement according to its terms; and

13.1.5 In accordance with Section 13.2 below.

13.2 Early Termination Option.

13.2.1. Owner may terminate this Agreement for convenience, in its sole discretion, upon the end of the 2013 fiscal year (June 30, 2013) by providing at least ninety days (90) days advance written notice to KSM of such decision. Termination shall be effective following expiration of the notice period and payment of the Management Fee (including both the Fixed Management Fee and the Accounting Reimbursement portions) in full for the period through and including June 30, 2014. If such option is not exercised as described above, then this Agreement shall continue until the Termination Date; provided that either party may still exercise the right of termination pursuant to Section 13.2.2 below.

13.2.2. Either party may terminate this Agreement for convenience, in its sole discretion, upon the end of the 2014 fiscal year (June 30, 2014) by providing at least one hundred eighty (180) days advance written notice to the other party of

such decision. If such option is not exercised as described above, then this Agreement shall continue until the Termination Date.

13.3 Payments Upon Termination; Repayment of Loan. Upon expiration or termination of this Agreement, all sums owed by either party to the other shall be paid within thirty (30) days of the effective date of such termination. Such payment obligations shall include repayment in full of all amounts outstanding under the KSM Loan (described in Section 15.20 below), including all principal as well as accrued yet unpaid interest.

~~13.4 Employee and Other Obligations Upon Termination.~~ Upon a termination of this Agreement for any reason, Owner shall remain responsible for payment of obligations connected with the Management Services rendered through the effective date of termination (including all Operating Expenses, all Gross Payroll obligations, as well as the Management Fee and all out of pocket expenses). Such obligations shall include all amounts to become due and owing to the terminated staff of KSM at the Courses through the effective date of termination. Owner shall pay all accrued wages for the terminated staff through such termination date and shall reimburse and/or hold harmless KSM for workers compensation insurance and other employee benefits paid or accrued by KSM on behalf of Owner to the terminated staff as of the termination date. Additionally, Owner shall be responsible for the payment of any earned and accrued vacation owed or due to the terminated staff as a result of the termination as well as any manual adjustments of wages and any unclaimed wages due the terminated staff accruing prior to the termination date and shall, if requested by KSM, reimburse KSM for any such payments made by KSM. Any amounts owed to KSM pursuant to this Section shall be paid to KSM within thirty (30) days of written request therefor.

## ARTICLE 14

### NOTICES

14.1 Notices. Any notices or other communications required or permitted hereunder shall be sufficiently given if in writing and (i) delivered personally, (ii) sent by certified mail, return receipt requested, postage prepaid ("Mail"), or sent by nationally-recognized overnight mail or courier service ("Overnight Courier"), addressed as shown below, or to such other address as the party concerned may substitute by written notice to the other. Any notice will be deemed received (A) upon the date personal delivery is made, (B) three (3) business days after the date it is deposited in the Mail, (C) one (1) business day after it is deposited with an Overnight Courier, or (D) the date upon which attempted delivery of such notice, whether by Mail, Overnight Courier or personal delivery, is refused or rejected.

If to Owner:

City of Stockton  
605 N. El Dorado  
Stockton, California 95202  
Attention: Pamela Sloan



If to KSM:

KemperSports Management, Inc.  
500 Skokie Boulevard, Suite 444  
Northbrook, Illinois 60062  
Attention: Steven K. Skinner, Chief Executive  
Officer

with a copy to:

KemperSports Management, Inc.  
500 Skokie Boulevard, Suite 444  
~~Northbrook, Illinois 60062~~  
Attention: Corporate Counsel

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The addresses and addressees may be changed by giving notice of such change in the manner provided herein for giving notice. Unless and until such written notice is received, the last address and addressee given shall be deemed to continue in effect for all purposes.

## ARTICLE 15

### MISCELLANEOUS

15.1 Exhibits. All Exhibits attached hereto are incorporated herein by this reference as if fully set forth herein. If any Exhibits are subsequently changed by the mutual written agreement of the parties, the Exhibits shall be modified to reflect such change or changes and dated and initialed by the parties.

15.2 Entire Agreement. This Agreement and the Exhibits hereto embody the entire agreement and understanding of the parties relating to the subject matter hereof and supersede all prior representations, agreements, and understandings, oral or written, relating to such subject matter.

15.3 Amendment and Waiver. This Agreement may not be amended or modified in any way except by an instrument in writing executed by all parties hereto; provided, however, either party may, in writing, (i) extend the time for performance of any of the obligations of the other, (ii) waive any inaccuracies and representations by the other contained in this Agreement, (iii) waive compliance by the other with any of the covenants contained in this Agreement, and (iv) waive the satisfaction of any condition that is precedent to the performance by the party so waiving of any of its obligations under this Agreement.

15.4 Proprietary Information. The trade names, trademarks and logos of Owner (collectively, the "Owner Marks") shall be used by KSM only in connection with the performance of the services provided under this Agreement and as otherwise provided in this Agreement or as agreed upon by Owner; provided, however, that Owner agrees that KSM may use the Owner Marks in its marketing and promotional materials as a course managed by KSM. All specifically identifiable information developed by KSM for Owner at the expense of Owner shall be the property of both KSM and Owner and such information may continue to be used by Owner at the Courses beyond any expiration or termination of this Agreement; provided, however, that Owner may not use or grant others the right to use such information at any other

location nor disclose or grant any rights to such information to any third party. All of KSM's proprietary information, including (i) trade names, trademarks and logos as well as programs that have been or may be developed by KSM, and (ii) software and technology, shall remain the exclusive property of KSM and neither Owner nor any of its affiliates or successors may use or disclose such proprietary information without the advance written consent of KSM. The obligations and restrictions contained in this Section shall survive the expiration or termination of this Agreement for any reason.

15.5 No Partnership or Joint Venture. Nothing contained herein shall be deemed or ~~construed by the parties hereto or by any third party as creating the relationship of~~ (i) a partnership, or (ii) a joint venture between the parties hereto; it being understood and agreed that neither any provisions contained herein nor any acts of the parties hereto shall be deemed to create any relationship between the parties hereto other than the relationship of independent contractor.

15.6 Restrictions as to Employees. During the Term and for a period of two (2) years after the end of the Term, it is agreed that Owner and/or its agents and contractors shall not, directly or indirectly, seek to contact, entice, or discuss employment with any Key Employee of KSM nor shall Owner, its agents and/or contractors employ or seek to employ, directly or indirectly, any such Key Employee, without first obtaining the written consent of KSM. For purposes hereof, a "Key Employee" of KSM shall mean any individual holding any of the following positions at any time during the Term: the general manager, superintendent, accountant/bookkeeper, head professional or assistant superintendent of the Courses, or any employee of KSM's corporate office.

15.7 Assignment; Successors and Assigns.

15.7.1 This Agreement may not be assigned by either party hereto without the express written consent of the other party, except that KSM may assign this Agreement to any of its Affiliates. Owner shall have final approval of assignments to KSM Affiliates.

15.7.2 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, legal representatives, and permitted assigns.

15.8 Severability. Except as expressly provided to the contrary herein, each section, part, term, or provision of this Agreement shall be considered severable, and if for any reason any section, part, term, or provision herein is determined to be invalid and contrary to or in conflict with any existing or future law or regulation by a court or governmental agency having valid jurisdiction, such determination shall not impair the operation of or have any other affect on other sections, parts, terms, or provisions of this Agreement as may remain otherwise intelligible, and the latter shall continue to be given full force and effect and bind the parties hereto, and said invalid sections, parts, terms, or provisions shall not be deemed to be a part of this Agreement.

15.9 Survival. All covenants, agreements, representations, and warranties made herein shall survive the execution and delivery of (i) this Agreement, and (ii) all other documents and instruments to be executed and delivered in accordance herewith, and shall continue in full force and effect.

15.10 Accord and Satisfaction; Allocation of Payments. No payment by Owner or receipt by KSM of a lesser amount than that which is owed to KSM shall be deemed to be other than on account of such amounts owed to KSM, nor shall any endorsement or statement on any check or letter accompanying any check or payment to KSM be deemed an accord and satisfaction, ~~and KSM may accept such check or payment without prejudice to KSM's right to~~ recover the balance of the amounts owed to KSM or pursue any other remedy provided for in this Agreement or as otherwise provided at law or in equity. In connection with the foregoing, KSM shall have the absolute right in its sole discretion to apply any payment received from Owner, regardless of Owner's designation of such payments, to any outstanding amount of Owner then not current and due or delinquent, in such order and amounts as KSM, in its sole discretion, may elect.

15.11 Construction and Interpretation of Agreement. This Agreement shall be governed by and construed under the laws of the State of California. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or considering same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of the rule or conclusion that a document should be construed more strictly against the party who itself or through its agent prepared the same. It is agreed and stipulated that all parties hereto have equally participated in the preparation of this Agreement and that legal counsel was consulted by each party before the execution of this Agreement.

15.12 Captions. Captions, titles to sections, and paragraph headings used herein are for convenience of reference and shall not be deemed to limit or alter any provision hereof.

15.13 Governing Document. This Agreement shall govern in the event of any inconsistency between this Agreement and any of the Exhibits attached hereto or any other document or instrument executed or delivered pursuant hereto or in connection herewith.

15.14 Outside Businesses. Nothing contained in this Agreement shall be construed to restrict or prevent, in any manner, any party or any party's affiliates, parent corporations, or representatives or principals from engaging in any other businesses or investments, nor shall Owner or KSM have any right to share or participate in any such other businesses or investments of the other party.

15.15 Counterparts; Facsimile or E-Mailed Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same Agreement. Facsimile signature or scanned and e-mailed signature shall be as effective as an original signature.

15.16 Unavoidable Delays. The provisions of this Section shall be applicable if there shall occur during the Term any (i) strikes, lockouts, or labor disputes, (ii) inability to obtain labor or materials, or reasonable substitutes therefor, (iii) acts of God, governmental restrictions,

regulations or controls, enemy or hostile governmental action, civil commotion, fire, or other casualty, or (iv) other conditions beyond the reasonable control of the party obligated to perform. If either party shall, as the result of any of the above-described events, fail punctually to perform any obligation on its part to be performed under this Agreement, then such failure shall be excused and not be a breach of this Agreement by the party claiming an unavoidable delay (an "Unavoidable Delay"), but only to the extent the delay is occasioned by such event. If any right or option of either party to take any action under or with respect to the Term is conditioned upon the same being exercised within any prescribed period of time or at or before a named date, then such prescribed period of time or such named date shall be deemed to be extended or delayed, as the case may be, upon written notice, as provided above, for a time equal to the period of the Unavoidable Delay. Notwithstanding anything contained herein to the contrary, the provisions of this Section shall not be applicable to either party's obligation to pay any sums, monies, costs, charges, or expenses required to be paid pursuant to the terms of this Agreement.

15.17 No Third-Party Beneficiaries. Nothing herein contained shall be deemed to establish any rights of third parties against the parties hereto; it being the intent that the rights and obligations set forth herein are those of the parties hereto alone, with no third party beneficiary rights intended.

15.18 Certain Services Excluded. Notwithstanding anything else contained in this Agreement to the contrary, KSM's services are limited to those specifically noted in the Agreement and do not include, amongst others and without limitation, architectural, engineering, design or general contracting services, facility planning services, accounting or tax related assistance or advice, legal advice or services, expert witness services, professional cost report preparation, data processing or feasibility studies. KSM's services will not constitute an audit, review or compilation or any other type of financial statement reporting, or consulting engagement subject to the rules of the AICPA or other similar bodies. KSM will not be expressing any professional opinions on and makes no representations or warranties in conjunction with this engagement.

15.19 Bankruptcy Obligations. KSM shall have no obligation to provide any services under the Agreement in the event that Owner becomes a debtor under the Bankruptcy Code, and, in accordance with Section 12 hereof, may terminate the Agreement in such event. In the event that Owner is or becomes a debtor under the Bankruptcy Code and KSM agrees to provide services to Owner post-petition, the parties shall enter into a revised written agreement or an amendment to this Agreement to govern their respective rights and obligations as part of Owner's bankruptcy case. Notwithstanding the foregoing, Owner expressly agrees that KSM shall be compensated by Owner for all commercially reasonable efforts to comply with all requirements or requests for information placed upon KSM in an Insolvency Proceeding by Owner, any receiver, trustee or liquidator for Owner or any property of Owner, any assignee for the benefit of creditors, or any trustee in any case under the Bankruptcy Code, at a reasonable hourly rate set by KSM in its reasonable discretion, in addition to the out-of-pocket expenses (including legal fees) incurred by KSM in connection with the Insolvency Proceeding (the "Insolvency Administration Fees"). All such Insolvency Administration Fees shall be considered "Operating Expenses" under this Agreement.

15.20 KSM Loan. If requested in writing by Owner during the twelve (12) months after the Commencement Date, KSM agrees to provide a loan to Owner of up to \$200,000 to be used by Owner solely for capital expenditures in connection with the Courses (the "KSM Loan"). At KSM's option, KSM may enter into a loan agreement and related documents with a financial institution of its choosing in order to acquire the funds for the KSM Loan (the "Loan Documentation"). In the event that KSM enters into such Loan Documentation, Owner agrees to cooperate fully with KSM in connection with such Loan Documentation, including without limitation, signing any requisite guarantee or security agreements. Owner further acknowledges and agrees that, in the event KSM elects to procure third party funds to provide the KSM Loan, KSM's obligation to provide the KSM Loan hereunder shall be subject to KSM's ability to acquire such funds on terms and subject to conditions reasonably acceptable to KSM. The maturity date of the KSM Loan shall be the earlier of (A) the fifth (5<sup>th</sup>) anniversary of the Commencement Date, or (B) the expiration or termination of this Agreement for any reason (the "KSM Loan Maturity Date"). Owner shall pay interest on the outstanding amounts under the KSM Loan at rate equal to (i) one month LIBOR (the London InterBank Offer Rate quoted for a term of one (1) month by the Wall Street Journal on the last business day of each month), plus 400 basis points (4.0%) per month, but in no event less than six percent (6%) annually; or (ii) the rate at which KSM obtains the funds from a third party financial institution, if applicable. (In the event any portion of this Section violates any state or federal law or regulation, this Section shall be deemed void and shall have no other effect or make invalid any other provision of the Agreement.) Interest shall be due and payable on the first day of each consecutive month beginning on the first day of the month next succeeding the date of the granting of the KSM Loan, with all remaining accrued and unpaid interest due and payable on the KSM Loan Maturity Date. Principal shall be amortized over the term of the KSM Loan and shall be due and payable on the first day of each consecutive month beginning on the first day of the month next succeeding the first anniversary of the Commencement Date, with all remaining outstanding principal due and payable on the KSM Loan Maturity Date. On the first anniversary of the Commencement Date after granting the KSM Loan to Owner, KSM shall provide to Owner an amortization schedule setting forth the amount of principal and interest to be repaid by Owner over the term of the KSM Loan. The monthly principal and interest payments may be made directly out of the Operating Expense Account. As security for the payment of the KSM Loan and the performance by Owner of all obligations relating thereto, Owner shall assign and grant to KSM a continuing first priority lien on and security interest (to the extent permitted by law) in upon and to all right, title and interest of Owner, whether now owned or hereafter created, in and to any and all accounts, money, contract rights, chattel paper, documents, deposit accounts, securities, investment property, instruments, letter-of-credit rights, commercial tort claims, insurance claims and all of Owner's rights, remedies, security, liens and supporting obligations, in to and in respect of the foregoing (unless otherwise defined in this Agreement, all terms used in this sentence shall have the meanings given them in Article 9 of the Uniform Commercial Code (collectively, the "Collateral"). In order to evidence the KSM Loan and KSM's security interest in the Collateral, Owner shall execute and deliver to KSM a Promissory Note, Security Agreement and Deposit Account Control Agreement. KSM shall not be required to provide the KSM Loan unless and until Owner delivers to KSM and duly authorizes fully executed originals of the Promissory Note, Security Agreement and Deposit Account Control Agreement, each in form and substance acceptable to KSM in its sole and absolute discretion. All amounts outstanding under the KSM Loan shall be repaid to KSM in full (including all principal and all

accrued yet unpaid interest) on the KSM Loan Maturity Date. If at any time KSM deems it to be in its best interest and/or if Owner defaults under any term or provision of, or causes an acceleration of the performance required under, any other agreement or document with a financial institution, creditor or other third party, or defaults in any of its payment obligations to KSM or any third party, then KSM may, in its sole discretion, require additional collateral, guarantees or other security in connection with the KSM Loan.

15.21 Closure of a Course. In the event that Owner decides, for whatever reason, to close one of the Courses during the term of the Agreement the parties shall negotiate in good faith to restructure this Agreement to take into account that new circumstance and its effect upon the services to be provided by KSM and the Management Fees and other expenses to be paid by the Owner.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

KEMPERSPORTS MANAGEMENT, INC.

CITY OF STOCKTON,  
A Municipal Corporation

By: \_\_\_\_\_

Steven K. Skinner  
Chief Executive Officer

By: \_\_\_\_\_

Name: Bob Deis  
Title: City Manager

APPROVED AS TO FORM

JOHN LUEBBERKE  
CITY ATTORNEY

By:

  
\_\_\_\_\_  
Deputy City Attorney

ATTEST:

By: \_\_\_\_\_

KATHERINE GONG MEISSNER  
City Clerk of the City of Stockton



## EXHIBIT A DEFINITIONS

All capitalized terms referenced or used in the Management Agreement (the “Agreement”) and not specifically defined therein shall have the meaning set forth below in this Exhibit A, which is attached to and made a part of the Agreement for all purposes.

- Affiliate(s). The term “Affiliate(s)” shall mean a Person that directly or indirectly, or ~~through one or more intermediaries, controls, is controlled by, or is under common control~~ with the Person in question and any officer, director, or trustee, and any stockholder or partner of any Person referred to in the preceding clause owning fifty percent (50%) or more of such Person. For purposes of this definition, the term “control” means the ownership of fifty percent (50%) or more of the beneficial interest of the voting power of the appropriate entity.
- Courses. The term “Courses” shall mean the golf courses to be operated as “Swenson Park Golf Course” and “Van Buskirk Golf Course” located on and operated from the Real Property.
- Environmental Laws. The term “Environmental Laws” shall mean all current and future federal, state, and local statutes, regulations, ordinances, and rules relating to (i) the emission, discharge, release, or threatened release of a Hazardous Material into the air, surface water, groundwater, or land; (ii) the manufacturing, processing, use, generation, treatment, storage, disposal, transportation, handling, removal, remediation, or investigation of a Hazardous Material; or (iii) the protection of human health, safety, or the indoor or outdoor environment, including, without limitation, the Clean Air Act, the Federal Water Pollution Control Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Occupational Safety and Health Act, all amendments thereto, all regulations promulgated thereunder, and their state or local statutory and regulatory counterparts.
- Gross Revenues. The term “Gross Revenues” shall mean all monthly receipts related to or derived from the operation of the Courses from cash or credit transactions recognized during the Term, computed on an accrual basis, including, but not limited to, greens fees, cart rental fees, income derived from the investment of Gross Revenues, the amount of all sales (wholesale or retail) of food, beverages, goods, wares, or merchandise on, at, or from the Property, or for services of any nature performed on, at, or from the Property, determined in accordance with generally accepted accounting principles applied on a consistent basis. Gross Revenues shall be reduced by any refunds, rebates, discounts, and credits of a similar nature given, paid, or returned by KSM or Owner in the course of obtaining such Gross Revenues.

Gross Revenues shall not include:

- Applicable gross receipts taxes, admission, cabaret, excise, sales, and use taxes, or similar governmental charges collected directly from customers or their guests or as a part of the sales price of any goods or services;
- Service charges that are percentage gratuities added to billings, to the extent paid to employees of the Courses;
- Proceeds of borrowings by Owner;
- ~~Proceeds paid as a result of an insurable loss, unless paid for the loss or interruption of business, to the extent such sums are used to remedy said loss;~~
- Interest or investment income earned on distributed Positive Net Cash Flow to Owner or KSM pursuant to the terms of the Agreement; or
- Owner's Advances.

Any of the above provisions resulting in a double exclusion from Gross Revenues shall be allowed as an exclusion only once.

- Hazardous Material. The term "Hazardous Material" shall mean any solid, liquid, or gaseous substance, chemical, compound, product, byproduct, waste, or material that is or becomes regulated, defined, or designated by any applicable federal, state, or local governmental authority or by any Environmental Law as hazardous, extremely hazardous, imminently hazardous, dangerous, or toxic, or as a pollutant or contaminant, and shall include, without limitation, asbestos, polychlorinated biphenyls, and oil, petroleum, petroleum products and petroleum byproducts.
- Improvements. The term "Improvements" shall mean the improvements, structures, and fixtures placed, constructed, or installed on the Real Property for the Courses, and any additions or subsequent modifications thereto.
- Insecurity Event. The term "Insecurity Event" shall mean the occurrence of any one or more of the following events: (a) there shall occur a default under any agreement, document or instrument, other than this Agreement, to which Owner is a party, the consequences of which could reasonably be expected to have a Material Adverse Effect; (b) any statement, report, financial statement or certificate made or delivered by Owner, or any of its officers, employees or agents, to KSM is untrue, incomplete or incorrect in any material respect; (c) any of Owner's assets are attached, seized, levied upon or subjected to a writ or distress warrant, or come within the possession of any receiver, trustee, custodian or assignee for the benefit of creditors and the same is not cured within thirty (30) days thereafter; (d) an application is made by any person, other than Owner, for the appointment of a receiver, trustee, or custodian for any of Owner's assets and the same is not dismissed within thirty (30) days after the application therefor; (e) any material change in Owner's capital structure or in any of its business objectives, purposes and operations which might in any way adversely effect the repayment of its obligations to KSM pursuant to this Agreement; or (f) any other event or occurrence, which, in the

reasonable discretion of KSM, could materially and adversely affects Owner's ability to repay its obligations to KSM pursuant to this Agreement.

- Intangible Personal Property. The term "Intangible Personal Property" shall mean all intangible property or rights owned or held by Owner in connection with the Courses, including, but not limited to, security deposits, prepaid rents, liquor and operating licenses, and all trademarks related to the Courses.
- KSM. The term "KSM" means KemperSports Management, Inc., an Illinois corporation, ~~and its successors, legal representatives, and permitted assigns.~~
- Management Services. The term "Management Services" shall mean the services provided by KSM pursuant to this Agreement.
- Material Adverse Effect. The term "Material Adverse Effect" shall mean any event that has a material adverse effect on (i) the business, assets, operations or financial or other condition of Owner, and (ii) Owner's ability to pay the amounts owed to KSM in accordance with the terms hereof.
- Net Operating Income. The term "Net Operating Income" or "NOI" shall be computed as the sum of Gross Revenues less cost of goods sold, payroll, other Operating Expenses, maintenance equipment and golf carts leases, accounting reimbursements and the Fixed Management Fees. Such calculation shall not include payments associated with capital expenditures, interest expense, taxes, depreciation and amortization
- Operating Expenses. The term "Operating Expenses" shall mean all operating expenses incurred or paid in connection with the operations of the Courses, computed on an accrual basis, including, but not limited to, the following items:
  - Salaries, wages, employee benefits, and payroll expenses, including without limitation, payroll service bureau fees, payroll taxes, Course profit sharing programs, and insurance for all employees employed on-site in the direct operation of the Courses, excluding, however, service charges, which are defined as percentage gratuities added to billings and paid to employees (collectively, the "Gross Payroll");
  - Marketing, advertising, and promotional expenses;
  - Purchase and replacement, as necessary, of inventories of maintenance parts and supplies, food stores and bar supplies;
  - Purchase and replacement, as necessary, of silver, chinaware, glassware, cooking utensils, and other similar items of equipment;
  - Purchase and replacement, as necessary, of office supplies, computers, restaurant and kitchen equipment, printers, facsimile machines, photocopiers,

postage, printing, routine office expenses, and accounting services incurred in the on-site operation of the Courses

- Rental or lease payments and applicable taxes for maintenance equipment, golf carts and any other major items of furniture, fixtures, or equipment;
  - The costs of IT consultants and other consultants utilized for the Courses;
  - Reasonable travel expenses of on-site employees incurred exclusively in connection with the business of the Courses;
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- Accrual of a reserve for insurance (including workers' compensation) and property taxes each month in an amount or at a rate that is sufficient to pay such insurance premiums or property taxes when they become due and payable;
  - Insurance premiums and property taxes, to the extent not provided for in the reserve established therefore and any deductible amounts required to be paid pursuant to Course insurance coverage;
  - Accounts receivable previously included within Gross Revenues, to the extent they remain unpaid ninety (90) days after the first billing;
  - Auditing, accounting costs, computer fees (including costs to license and maintain accounting software), and legal fees incurred in respect of the operation of the Courses, including any reasonable financial management and reasonable accounting fees paid to third party accounting firms, if included in the Budgets;
  - Costs incurred for utilities, including, but not limited to, all electric, gas, and water costs, and any other private utility charges incurred in connection with the operation of the Courses;
  - Ordinary maintenance and repairs, exclusive of any capital improvements or capital replacements, which are hereby excluded;
  - The amount to be retained for purposes of maintaining Working Capital at an appropriate level;
  - All out-of-pocket expenses incurred by KSM in providing the services under the terms of the Agreement, including without limitation, reasonable travel for employees employed on-site at the Property and KSM's other employees while engaged in performing the obligations of KSM hereunder, air express, costs of recruitment (including applicable agent's fee), and other incidental expenses included in the Budget;

- Expenses, including legal fees, damages or other costs, involved in defending any employment-related lawsuits, charges, or claims involving personnel of the Courses;
- All expenses set forth in the approved Budgets; and
- All other customary and reasonable expenses incurred in the operation of the Courses and the Improvements.

~~Any of the above provisions resulting in a double inclusion as an Operating Expense shall be allowed as an inclusion only once.~~

Operating Expenses shall not include (i) depreciation or amortization, (ii) principal or interest payments on indebtedness, and (iii) federal, state and local income taxes of any nature or kind incurred by Owner or KSM.

- Unanticipated and Emergency Expenditures. The term “Unanticipated Expenditures” and “Emergency Expenditures” shall mean all expenses incurred or paid as a result of damage to equipment and physical plant including, but not limited to, the golf courses and the buildings.
- Owner. The term “Owner” means the City of Stockton, California and its successors, legal representatives, and permitted assigns.
- Person. The term “Person” shall mean any individual, partnership, corporation, association, or other entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such Person where the context so permits; and, unless the context otherwise requires, the singular shall include the plural, the masculine shall include the feminine and the neuter, and vice versa.
- Personal Property. The term “Personal Property” shall mean the Intangible Personal Property and the Tangible Personal Property.
- Positive Net Cash Flow. The term “Positive Net Cash Flow” shall mean the amount, if any, by which Gross Revenues exceed Operating Expenses for the particular period being measured.
- Property. The term “Property” shall mean (i) the Improvements, (ii) the Personal Property, and (iii) the Real Property.
- Real Property. The term “Real Property” shall mean that certain parcel of land upon which the Courses are located, the legal description of which is attached hereto as Exhibit B.
- Tangible Personal Property. The term “Tangible Personal Property” shall mean all equipment, machinery, fixtures, furnishings, accessories, and other tangible personal

property placed or installed, or to be placed or installed, on or about the Real Property and used as a part of or in connection with the operation of the Courses.

- Working Capital. The term “Working Capital” shall mean an amount sufficient to pay Operating Expenses for any given month.
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## **EXHIBIT B**

### **LEGAL DESCRIPTION OF REAL PROPERTY**

The Assessor's Parcel Numbers for Swenson Golf Course located at 6803 Alexandria Place in Stockton, CA 95207, are as follows: APN 097-110-14 and APN 097-110-24

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The Assessor's Parcel Number for Van Buskirk Golf Course located at 1740 Houston Avenue in Stockton, CA 95206 is as follows: APN 163-070-36

**EXHIBIT C**  
**CITY OF STOCKTON GOLF COURSE MAINTENANCE STANDARDS**

Technical Maintenance Specifications

**I. PUTTING GREEN MAINTENANCE**

**A. *Mowing***

Mowing shall be done daily using triplex type greens mowers. Height of cut shall be 3/16". Frequencies and height of cut may be modified from time to time as deemed necessary by the golf course superintendent depending on time of year and the amount of play. The practice of alternating mowing patterns will be followed and clippings will be collected except following aeration.

**B. *Aeration***

Shall be done a minimum of two (2) times per year, using conventional hollow tine methods to relieve soil compaction, and to promote a healthier growing environment. Holes shall be a maximum of three inches apart and a minimum of three inches deep. This practice shall be carried out with the minimum of interference to play.

**C. *Grain Control***

Vertical cutting shall be scheduled a minimum of four (4) times per year and done at 90 degree angles for full benefit. This function may be coordinated to compliment the aeration and topdressing schedules. Combing or brushing may also be done.

**D. *Topdressing***

Shall be done a minimum of two (2) times per year following aeration using a minimum of 1/8" of material per application. An approved topdressing material similar to the greens construction sand or USGA approved, shall be applied and brushed or drug into the turf. Application shall be done with an approved topdressing spreader. Excess sand shall be removed.

Spot topdressing may be applied to repair damage from ball marks or any other damage. Light topdressings may be done in conjunction with verticutting.

**E. *Fertilization***

Types of materials and analysis shall be determined from the results of an annual soil nutrient level testing and growing conditions at the time of treatment. Under normal conditions, 0.5 to 1.2 pounds of actual nitrogen per thousand square feet may be applied per growing month. Typically, a variety of granular slow-release and liquid types of material may be utilized. Greens shall not be closed for fertilization. All



applicable regulations shall be strictly adhered to, and all required reporting shall be the responsibility of **CONTRACTOR**.

**F. *Weed Control***

Weed control will be achieved through both pre-emergence and post-emergence chemical applications. These will be made in a timely manner to minimize damage to golf course playability. Every effort will be used to minimize weed infestations and Bermuda grass encroachment. All applicable regulations shall be strictly adhered to, and all required reporting shall be the responsibility of **CONTRACTOR**.

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**G. *Insect and Disease Control***

Greens shall be checked daily for signs of pest activity. Applications of pesticides shall be carried out on a curative "as needed" basis. IPM (Integrated Pest Management) program will govern rates and timing of applications. All applicable regulations shall be strictly adhered to, and all required reporting shall be the responsibility of **CONTRACTOR**.

**H. *Overseeding***

Certified bent grass shall be uniformly seeded a minimum of two (2) times per year during the aeration/topdressing process. Light vertical mowing may be done prior to seeding, and covered with a light topdressing. Mowing heights shall be set at slightly higher cuts for the initial growth period.

**I. *Watering***

The greens shall be watered as necessary to keep the grass in optimal growing condition. At least 80% of E.T. (Evapo-transpiration) shall be used as a watering rate. Irrigation should produce greens that are evenly wet over the total green. Hand watering may be necessary.

**J. *Additional Green Requirements***

Any damage done to greens by any source shall be repaired as soon as possible.

Ball marks shall be repaired prior to mowing.

Damaged cups shall be replaced as soon as possible.

**II. TEE AND COLLAR MAINTENANCE**

**A. *Mowing***

Mowing shall be three (3) complete cycles per week with triplex type greens mowers, less often during climatic periods of reduced growth. Height of cut shall be 5/8" but may be modified from time to time as deemed necessary by the golf course superintendent depending on time of year and the amount of play. The width of the collar should be no greater than three (3) feet.

**B. *Aeration***

Shall be done a minimum of two (2) times per year, using conventional hollow tine methods to relieve soil compaction, and to promote a healthier growing environment. Holes shall be a maximum of three inches apart and a minimum of three inches deep. Plugs shall be chopped and returned to the playing surface. This practice shall be carried out with the minimum of interference to play.

**C. *Thatch Control***

Vertical cutting shall be scheduled a minimum of two (2) times per year and done at 90 degree angles for full benefit. This function may be coordinated to compliment the aeration and topdressing schedules. Combing or brushing may also be done.

**D. *Topdressing***

Shall be done a minimum of 2 (two) times per year following aeration using a minimum of 1/4" of material per application. An approved topdressing material, similar to the tee construction sand or USGA approved, shall be applied and brushed or drug into the turf. Application shall be done with an approved topdressing spreader. Spot topdressing may be applied to repair divot damage.

**E. *Fertilization***

Types of material and analysis shall be determined from results of annual soil nutrient level testing and growing conditions at the time of treatment. Under normal conditions, 0.25 to 0.75 pounds of actual nitrogen per thousand square feet may be applied per growing month. Typically combinations of granular slow release and liquid type of materials may be utilized. All applicable regulations shall be strictly adhered to, and all required reporting shall be the responsibility of **CONTRACTOR**.

**F. *Weed Control***

Weed control will be achieved through both pre-emergence and post-emergence chemical applications. These will be made in a timely manner to minimize damage to golf course playability. Every effort will be used to minimize weed infestations. Spot treatments with a contact herbicide shall be performed as needed. All applicable regulations shall be strictly adhered to, and all required reporting shall be the responsibility of **CONTRACTOR**.

**G. *Insect and Disease Control***

Tees and collars shall be checked daily for signs of pest activity. Applications of pesticides shall be carried out on a curative "as needed" basis. IPM (Integrated Pest Management) program will govern rates and timing of applications. All applicable regulations shall be strictly adhered to, and all required reporting shall be the responsibility of **CONTRACTOR**.

**H. *Litter Control***

Policing shall be done on a daily basis for the removal of all litter (i.e.: paper, leaves, cans, bottles, tree branches, etc.).

**I. *OverSeeding***

Tees shall be over seeded two (2) times per year during the aeration process using Perennial Ryegrass at a standard rate. Mowing heights shall be set at higher cuts for the initial growth period.

All divots on tees shall be filled with a topdressing/seed mixture weekly or as needed.

**J. *Watering***

The tees and collars shall be watered as necessary to keep the grass in optimal growing condition. At least 80% of E.T. (Evapo-transpiration) shall be used as a watering rate. Hand watering, sprinkler adjustment/addition may be necessary.

**III. FAIRWAY, DRIVING RANGE AND ROUGH MAINTENANCE**

**A. *Mowing***

The fairways shall be mowed two (2) times per week at a height of 3/4".

The driving range shall be mowed one (1) time per week at a height of 3/4".

The first cut of rough (12 feet out from fairway cut) shall be mowed one (1) time per week at a height of 1-1/2".

All other rough shall be mowed one (1) time per week at a height of 2-1/2".

Additional resources may need to be used after inclement weather to keep grass at an acceptable height.

**B. *Aeration/Vertical Mowing***

Aeration shall be done two (2) times per year, or more often if needed using 5/8" tines penetrating to a depth of at least 3". Spot aeration may be done to relieve compaction.

Vertical mowing is not required except in extraordinary circumstances for disease control or to reduce thatch from stoloniferous weed grasses.

**C. *Fertilization***

~~Types of material and analysis shall be determined from results of the annual soil nutrient level testing and growing conditions at the time of treatment. Under normal conditions, 125-250 pounds of actual nitrogen per acre, per growing season, may be applied annually.~~

**D. *Weed Control***

Weed control will be achieved through both pre-emergence and post-emergence chemical applications. These will be made in a timely manner to minimize damage to golf course playability. Every effort will be used to minimize weed infestations. Spot treatments with a contact herbicide shall be performed as needed. All applicable regulations shall be strictly adhered to, and all required reporting shall be the responsibility of **CONTRACTOR**.

**E. *Insect and Disease Control***

Fairways, driving range and roughs shall be checked daily for signs of pest activity. Applications of pesticides shall be carried out on a curative "as needed" basis. IPM (Integrated Pest Management) program will govern rates and timing of applications. All applicable regulations shall be strictly adhered to, and all required reporting shall be the responsibility of **CONTRACTOR**.

**F. *Turf Maintenance on Fairways, Driving Range and Roughs***

Bare spots shall be seeded or sodded, whichever is most appropriate, a minimum of weekly to insure there are no bare areas on the course.

**G. *Litter Control***

Policing shall be done on a daily basis for the removal of all litter (i.e.: paper, leaves, cans, bottles, tree branches, etc.).

**H. *Watering***

The fairways, driving range and roughs shall be watered as necessary to keep the grass in optimal growing condition. At least 80% of E.T. (Evapo-transpiration) shall

be used as a watering rate. Hand watering, sprinkler adjustment/addition may be necessary.

#### IV. **MAINTENANCE RELATED TO ON COURSE PLAY (Non Horticultural)**

##### A. ***Cups***

Cups shall be changed every day the greens are mowed. During this operation, inspection of the putting surface shall be made, and any ball marks or other damage will be repaired. Practice green cups shall be changed 2-3 times per week.

##### B. ***Teeing Ground***

Tee markers shall be moved as often as the cups are set on the greens. Litter containers shall be emptied daily. Tee towels shall be changed weekly or as needed. Ball washers shall be checked daily and filled at least twice a week or as needed.

##### C. **Miscellaneous Requirements**

Superintendent shall have the responsibility to mark temporary hazards, out of bound areas, and other course conditions as they occur or are required by tournament play.

**CONTRACTOR** shall be responsible for the maintenance of all tee markers, cups, flags, ball washers, trap rakes, yardage signs and benches on the course. Maintenance shall include repairing, painting, replacing and otherwise keeping these amenities in a good condition that is conducive to player enjoyment of and respect for the course. Repairs shall be done whenever function or appearance is hampered.

Policing shall be done on a daily basis for the removal of all litter (i.e.: paper, leaves, cans, bottles, tree branches, etc.). Additional litter pick-ups may be necessary after special events.

Golf course restrooms shall be maintained a minimum of two times per day and more often during heavy use. Restrooms shall be cleaned, supplied with adequate paper and free from unpleasant odors.

Graffiti shall be removed as soon as possible after discovery.

Surfaces shall be kept clean at all times; sweeping, cleaning or washing of surfaces shall be done as often as necessary to keep a pleasant appearance.

Inspect, repair and replace minor damage to fencing weekly.

Cart paths shall be maintained in a smooth condition. Repair promptly and remove standing water when discovered.

V. **SAND BUNKER MAINTENANCE**

A. ***Raking***

Raking shall be accomplished in its entirety 3-5 days per week to maintain a semi-soft, dry condition of the desired smoothness. Checking and spot raking shall be done daily.

B. ***Edging***

Edging shall be every three (3) months, or more frequently if required. Care shall be taken to maintain the design outline of the bunkers to insure the integrity of the bunker shape.

C. ***Weed Control***

Weed control shall be accomplished by manual removal, as required. Spot treatments with contact herbicides shall be done as needed.

D. ***Sand Depth***

Bunkers shall be randomly checked monthly for depth of sand, and shall be maintained no less than six (6) inches deep on slopes and eight (8) inches deep in the bottoms. Additional sand shall be added where needed. (This requirement is based on adequate levels of sand at contract inception).

F. ***Litter Control***

Policing shall be done on a daily basis for the removal of all litter (i.e.: paper, leaves, cans, bottles, tree branches, pine cones, etc.).

VI. **TREES, SHRUB/OTHER LANDSCAPING MAINTENANCE**  
**(CLUBHOUSE/GOLF COURSE/PARKING LOT)**

A. ***Tree Pruning***

Height limitation for tree pruning included within the scope of this agreement is fifteen (15) feet above the ground. Low hanging branches that present a hazard to golf carts or to the golfer shall be removed where practical.

Trees are to be low pruned one (1) time per year in the winter months with the exception of safety related pruning which will be performed as required. Removal of dead wood, debris and unwanted growth may be removed at this time.

Stakes and ties are to be inspected monthly for correct installation and placement. When trees are stable enough and have developed caliper to stand alone, stakes and ties shall be removed. Trees staked (without ties) for protection from golfer damage may remain staked an additional period of time.

**B. *Tree Basins***

A cleared circle 2-4 feet in diameter shall be chemically maintained at the base of trees to reduce competition for nutrients by lawns and ground covers, and to prevent damage from landscape equipment. ~~Stakes or guy wires shall be treated in the same manner as the base of trees described above.~~

**C. *Shrub and Flower Care***

Trim shrubs to maintain a natural shape as a continuous operation, but not when the plant is in flower. It is not a recommended horticultural practice to shear shrubs. However, if **The City of Stockton** requests it, we will shear shrubs to the desired shape.

Shrub and flower beds will be kept weed free by the use of pre-emergent, selective herbicides, mulch, and manual weeding.

Spent flowers, leaves, and other landscape debris shall be removed from plant areas daily, or as required.

**D. *Pest Control***

Frequent inspections of all trees and shrubs shall be done. When insect or disease organisms are detected, they shall be brought to the attention of the **CLIENT REPRESENTATIVE** to discuss appropriate control measures.

**E. *Ground Cover Care***

Edge or prune groundcovers as needed to keep from spreading over walks, curbs, or up walls. Pruning to maintain a natural shape will be a continuous operation.

Keep weed-free at all seasons of the year by the use of pre-emergent, selective herbicides, and manual weeding.

**F. *Turf Care***

The mowing of all turf areas shall be no less than once a week. Fertilizer shall be applied at the rate of 4-6 pounds of actual nitrogen per thousand square feet per year, or as needed to maintain health and color.

The edging of all walks and other paved areas will be performed monthly during the active growing season.

**G. *Litter and Weed Control***

Paper, grass clippings, cans, and branches shall be removed from the landscape on a daily basis. All parking areas and/or walkways shall be kept clear of debris generated from the maintenance operation.

~~Weeds in curbs and paved walk joints immediately adjacent to landscaped areas will be removed weekly.~~

**H. *Water and Fertilizer***

Trees, shrubs, ground cover flowers and all other landscape plants shall be watered and fertilized as necessary to provide optimum health.

**VII. IRRIGATION SYSTEM**

**A. *Scheduling***

Watering shall be scheduled by the golf superintendent in quantities and frequencies consistent with seasonal requirements, and shall be done at night so as not to interfere with golf play.

**B. *Inspection***

Irrigation coverage shall be reviewed daily.

**C. *Repair and Replacement***

**CONTRACTOR** shall prepare within the operating budget for minor irrigation repairs and replacement. Any item over \$5,000 is considered Capital Improvement and will need to be approved by the City.

**D. *Damage***

Any damages to system caused by **CONTRACTOR'S** equipment or carelessness while carrying out maintenance operations shall be repaired without charge. Where practical, repairs shall be made within one (1) watering period.

Vandalism, excessive damage caused by others, or faulty controllers shall be reported promptly to **CLIENT REPRESENTATIVE**.



VIII. **POTABLE WATER AND SEWER SYSTEM**

**CONTRACTOR'S** responsibility for the potable water system and sewer system shall only be that of minor repairs and maintenance. Items requiring outside service or expertise will be the **OWNER'S** responsibility or billed as an extra charge.

IX. **LAKE WATER AND AQUATIC WEED MANAGEMENT**

A. *Lakes and Waterways*

Lakes and waterways shall be treated for weed and algae infestation by a combination of approved aquatic herbicides and water colorants. Treatments may be applied by **CONTRACTOR**, licensed sub-**CONTRACTOR**, or a combination thereof. Physical removal may be necessary to keep lakes aesthetically pleasing.

X. **GROUNDS MAINTENANCE OF ADJACENT PREMISES**

A. *Swenson Park Golf Course - Utility Easement*

**CONTRACTOR** shall mow weekly at 2-1/2", keep free from weeds, fallen tree limbs, debris/litter, maintain irrigation system and apply adequate water to keep turf in optimal growing condition.

B. *Swenson Park Golf Course - Five Mile Slough*

**CONTRACTOR** shall remove debris/litter on a regular basis and maintain the aquatic environment through the removal of water hyacinth.

XI. **MISCELLANEOUS**

A. *Weekend and Holiday Schedule*

Greens mowing and course set-up shall be done.

B. *Practice Range*

Move tee markers daily, fill divots with sand/mix, police area, and remove litter.

C. *Materials*

All maintenance materials unless otherwise specified will be supplied by **CONTRACTOR**, and shall conform to specifications. These supplies, materials, and equipment shall include, but not be limited to:

All equipment necessary or appropriate for the performance of services under this Agreement, together with all necessary gas, oil, and spare parts for all equipment used by **CONTRACTOR** will be contractor's responsibility.

All necessary top dressing, seed, fertilizers, fungicides, insecticides, and herbicides will be contractor's responsibility.

Tee towels, soap, putting green cups and flags, bunker rakes, tee markers, trash receptacles, and other similar golf course equipment.

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Contractor will provide Sand for bunkers to maintain the minimum required depth.

The **CONTRACTOR** shall be responsible for monitoring water consumption to insure adequate, but not excessive, water use.

**D. *Accessories***

Direction signs, ropes (permanent and temporary), stakes, OB, and hazard stakes shall be maintained on a daily basis. Directional signs, putting green cups, pins, ball washer brushes, cleat brushes, and tee markers (that cannot be refurbished or repaired) shall be replaced no more than once per year without extra cost. Silk screened flags may be replaced two (2) times per year without extra cost. Additional client requested custom accessories not listed above shall be an extra cost, and shall be paid for by **NAME OF CLIENT** upon authorization.

**E. *Burrowing Animals, and Insect and Disease Control***

**CONTRACTOR** shall take appropriate action to minimize the effects of burrowing animals, and insect and disease infestations.

**F. *Mulched Areas***

Mulched areas shall be edged and kept free of litter (similar to rough area).

**XII. ITEMS NOT INCLUDED**

**A. *Acts of God Damage***

Damage to the golf course as a result of acts of God may include, but are not necessarily limited to: removing blown-over trees, broken limbs, and stumps; removing silt or debris deposited by floods; damage from freezing, hurricanes, or other unusual occurrences will be handled on an individual basis as a pre-approved extra cost. Maintenance staff shall make every effort to repair damage, and restore and clean the golf course within the framework of the Agreement, without extra cost.

Specialized equipment, Arborist, and additional labor requested by **The City of Stockton** will require a pre-approved extra cost.

**B. *Tree, Shrub, and Flower Replacement***

The loss of trees, shrubs, or flowers not caused by the **CONTRACTOR** may be replaced as an extra charge. It shall be the responsibility of **CONTRACTOR** to bring such needs to the **CLIENT REPRESENTATIVE'S** attention.

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**C. *Arborist Work***

Major tree pruning or other Arborist related work shall be an extra cost item requiring prior approval by the **CLIENT REPRESENTATIVE**. It shall be the responsibility of **CONTRACTOR** to provide estimates for needed work to the **CLIENT REPRESENTATIVE'S** attention.

**D. *Capital Improvements***

Work performed over and above the normal maintenance provided in the Agreement, such as excessive earth moving, reconstruction of a golf hole, tee, or green construction or reconstruction, brush clearing, and installation of french drains, including materials for the aforementioned work, shall be an extra cost item requiring prior approval by the **CLIENT REPRESENTATIVE**.

**E. *Bunker Sand***

Removal of bunker sand and replacing with new sand shall be an extra cost item requiring prior approval by the **CLIENT REPRESENTATIVE**.

**F. *Golf Accessories***

Installation or replacement of putting green cups and flags, bunker rakes, tee markers, trash receptacles, ball washers, cleat brushes, benches, and other similar golf course equipment over and above the specified annual replacement shall be an extra cost item requiring prior approval by the **CLIENT REPRESENTATIVE**. Any major accessory that has been stolen, damaged, or vandalized shall be replaced, repaired, and/or re-installed as an extra charge. It is the responsibility of the **CONTRACTOR** to bring to the **CLIENT REPRESENTATIVE'S** attention any such needs.

**G. *Landscaped Areas***

The installation of additional trees, shrubs, vines, and ground cover shall be an extra cost item requiring prior approval by the **CLIENT REPRESENTATIVE**. Deep feeding of trees requiring supplemental fertilization for growth and development will require prior approval by the **CLIENT REPRESENTATIVE**. Class one fine pruning of trees over fifteen (15) feet from the ground shall be an extra cost item

requiring prior approval by the **CLIENT REPRESENTATIVE**. Materials for mulching and installation of annual color shall be an extra cost item requiring prior approval by the **CLIENT REPRESENTATIVE**.

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**STOCKTON CITY COUNCIL**

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**RESOLUTION TERMINATING THE GOLF COURSE MAINTENANCE AGREEMENT  
BETWEEN VALLEYCREST GOLF COURSE MAINTENANCE AND THE CITY OF  
STOCKTON**

In 2010, several different options were being evaluated for future golf course operations in the City of Stockton (City); and

The golf course maintenance agreement with ValleyCrest Golf Course Maintenance (ValleyCrest) was due to expire in July 2010. ValleyCrest expressed interest in continuing to provide the maintenance services at the City's golf courses and offered a three-year contract at a 10% reduced contract price; and

On June 29, 2010, the City Council adopted Resolution 10-0230 and authorized a three-year golf course maintenance agreement with ValleyCrest, with a provision for early termination without cause upon 30 days notice and payment of an early termination fee of an amount equal to 5% of the compensation for the remainder of the term but not to exceed the monthly maintenance amount; and

With the implementation of a management agreement, KemperSports Management, Inc., will be responsible for the maintenance of both City golf courses, therefore, the current maintenance agreement with ValleyCrest needs to be terminated; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The City Council approves the termination of the golf course maintenance agreement with ValleyCrest.

2. The City Council approves the payment associated with the early termination of the maintenance agreement with ValleyCrest for an amount not to exceed \$95,000.

3. The City Manager is authorized to take such other actions as are appropriate to carry out the intent of this Resolution.

PASSED, APPROVED, and ADOPTED JUN 21 2011.

*Ann Johnston*

ANN JOHNSTON, Mayor  
of the City of Stockton

ATTEST:

*for Bonnie Paigi*  
KATHERINE GONG MEISSNER, City  
of the City of Stockton



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